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## Chapter ATCP 50

### SOIL AND WATER RESOURCE MANAGEMENT PROGRAM

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**Note:** Chapter Ag 166 was renumbered ch. ATCP 50 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 50 was repealed and recreated, Register, November, 1996, No. 491, eff. 12-1-96; corrections in ch. ATCP 50 made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491. Chapter ATCP 50 as it existed on September 30, 2002 was repealed and a new chapter ATCP 50 was created effective October 1, 2002.

**Note:** This chapter implements Wisconsin's soil and water resource management program under ch. 92, Stats. The department of agriculture, trade and consumer protection administers the program in cooperation with county land conservation committees, the land and water conservation board, the department of natural resources and other state and federal agencies. The program has the purposes specified under s. 92.14 (2), Stats.

#### Subchapter I — Definitions and General Provisions

##### ATCP 50.01 Definitions. In this chapter:

(1) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint or seed crops; raising of fruits, nuts or berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; or vegetable raising.

(2) "Conservation practice" means a facility or practice that is designed to prevent or reduce soil erosion, prevent or reduce non-point source water pollution, or achieve or maintain compliance with soil and water conservation standards. "Conservation practice" includes a nutrient management plan.

(3) "Cost-shared practice" means a conservation practice financed by a cost-share grant.

(4) "Cost-share grant" means a grant that reimburses a landowner for all or part of the cost to install or maintain a conservation practice identified in the grant.

**Note:** See s. ATCP 50.40.

(5) "County drainage board" means a board created and appointed under s. 88.17, Stats.

(6) "County land conservation committee" means the committee created by a county board under s. 92.06, Stats. "County land conservation committee" includes employees or agents of a county land conservation committee who, with committee authorization, act on behalf of the committee.

(7) "CREP program" means the combined state-federal conservation reserve enhancement program under s. 93.70, Stats. and 16 USC 3834(f)(4).

(8) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(9) "DNR" means the state of Wisconsin department of natural resources.

(10) "Farm" means a parcel of land on which a landowner conducts one or more agricultural practices.

(11) "Farm conservation plan" means a written agreement, between a county land conservation committee and a landowner, in which the landowner agrees to take specific steps to bring a farm into compliance with applicable soil and water conservation standards.

(12) "Individual" means a natural person.

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**(13)** “Lake district” means a public inland lake protection and rehabilitation district created under subch. IV of ch. 33, Stats.

**(14)** “Land out of agricultural production” means acreage that the owner can no longer use for normal crop or livestock production. Land is not taken “out of agricultural production,” for purposes of s. ATCP 50.08, if the landowner is free to use it for pasture, hay production and cropping subject to residue management.

**(15)** “Landowner” means any of the following:

(a) A person who owns a parcel of land.

(b) A person who rents, controls or uses a parcel of land for agricultural purposes.

**(16)** “Livestock operation” means a feedlot or other facility or pasture where animals are fed, confined, maintained or stabled.

**(17)** “Local governmental unit,” as used in s. ATCP 50.60, has the meaning given in s. 92.15 (1) (b), Stats., and includes a county, town, city, village, lake district and county drainage board.

**(18)** “Local regulation” means any of the following regulations that require conservation practices on farms:

(a) Soil and water conservation standards that a county land conservation committee adopts under s. 92.105, Stats.

(b) An ordinance or regulation that a county adopts under s. 59.69, 59.692, 92.07 (2), 92.11, 92.15, 92.16 or 92.17, Stats., or under other county authority.

(c) An ordinance or regulation that a town, city or village adopts under s. 92.11, 92.15, 92.16 or 92.17, Stats., or under other town, city or village authority.

(d) A regulation adopted by a county drainage board, a lake district or other special purpose district, or a tribe.

**(19)** “LWCB” means the state of Wisconsin land and water conservation board.

**(20)** “Manure” means livestock excreta. “Manure” includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

**(21)** “Manure management system” has the meaning given in s. ATCP 50.62 (1) (b).

**(22)** “Manure storage facility” has the meaning given in s. ATCP 50.62 (1) (c).

**(23)** “Manure storage structure” has the meaning given in s. ATCP 50.62 (1) (d).

**(24)** “Nonpoint source” has the meaning given in s. 281.65 (2) (b), Stats.

**Note:** Section 281.65 (2) (b), Stats., defines a “nonpoint source” as “a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source as defined under s. 283.01 (12).”

**(25)** “Nonpoint source water pollution” has the meaning given in s. 281.16 (1) (f), Stats.

**Note:** Section 281.16 (1) (f), Stats., defines “nonpoint source water pollution” as “pollution of the waters of the state that does not result from a point source, as defined in s. 283.01 (12).”

**(26)** “NRCS” means the natural resources conservation service of the United States department of agriculture.

**(27)** “NRCS technical guide” means the NRCS field office technical guide.

**Note:** Copies of the NRCS technical guide are on file with the department, the secretary of state and the revisor of statutes. Copies of individual standards contained in the NRCS technical guide may be obtained from the county land conservation committee or from an NRCS field office. This chapter incorporates, by reference, various NRCS technical guide standards. See *Appendix G*.

**(28)** “Nutrient management plan” means any of the following:

(a) A plan required under s. ATCP 50.04 (3) or 50.62 (5) (f).

(b) A farm nutrient plan prepared or approved, for a landowner, by a qualified nutrient management planner.

**Note:** A nutrient management plan must comply with s. ATCP 50.04 (3).

**(29)** “Nutrients” means plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes or other sources.

**(30)** “Person” means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other legal organization or entity.

**(31)** “RUSLE 2 equation” means means the following applicable NRCS release of version 2 of the revised universal soil loss equation:

(a) Except as provided in par. (b), the release that is in effect on November 1, 2004.

(b) For purposes of a compliance determination under ch. NR 151 or this chapter made prior to November 1, 2004, the release that was in effect on the date of the compliance determination.

**(32)** “Secretary” means the secretary of the department.

**(33)** “State regulation” means chs. 88, 92, 281 and 283, Stats., and rules promulgated by the department or DNR under ch. 88, 92, 281 or 283, Stats.

**(34)** “Structural height” means the difference in elevation in feet between the point of lowest elevation of the structure or embankment before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the structure or embankment.

**(35)** “Tribe” has the meaning given in s. 165.91 (1), Stats.

**(36)** “T-value” means the maximum average annual rate of soil erosion for each soil type that will permit a high level of crop productivity to be sustained economically and indefinitely.

**(37)** “Unconfined manure pile” means a quantity of manure, at least 175 cu. ft. in volume, that covers the ground surface to a depth of at least 2 inches and is not confined within a manure storage facility, livestock housing facility or barnyard runoff control facility.

**Note:** A typical 140 bushel manure spreader contains about 175 cu. ft. of manure.

**(38)** “Waters of the state” has the meaning given in s. 283.01 (20), Stats.

**(39)** “Weighted average soil rental rate” means, for each county, the rate determined by the United States department of agriculture, farm service agency, on form CRP-2.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02; CR 04-005: r. and rec. (31) Register October 2004 No. 586, eff. 11-1-04; correction in (35) made under s. 13.93 (2m) (b) 7., Stats.

**ATCP 50.02 Waivers.** The department may grant a written waiver from any provision of this chapter if the department finds that the waiver is necessary to achieve the objectives of this chapter. The secretary shall sign each waiver under this section. The department may not waive a statutory requirement.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

## **Subchapter II — Soil and Water Conservation on Farms**

**Note:** Under s. 281.16, Stats., DNR is primarily responsible for adopting performance standards to prevent pollution runoff from farms. The department of agriculture, trade and consumer protection (“DATCP”) must prescribe conservation practices to implement the DNR performance standards. DATCP must also establish soil conservation and farm nutrient management requirements. This subchapter spells out a single set of farm conservation practices that incorporates DNR performance standards by reference. Counties play a major role in implementing conservation practices on farms (see subchapter III of this chapter). Conservation requirements are contingent on cost-sharing (see s. ATCP 50.08).

**ATCP 50.04 Farm conservation practices.** Except as provided in s. ATCP 50.08, a landowner engaged in agricultural practices in this state shall implement the following conservation practices:

**(1) NONPOINT SOURCE POLLUTION CONTROL.** A landowner shall implement conservation practices that achieve compliance with DNR performance standards under ss. NR 151.02 to 151.08.

**(2) CROPLAND SOIL EROSION CONTROL.** A landowner shall manage croplands and cropping practices so that soil erosion rates

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on cropped soils, determined according to RUSLE 2 equation, do not exceed T-value.

**Note:** See s. 92.025 (1), Stats., and s. NR 151.02. Soil erosion includes erosion caused by wind or water. For most soils, "T-value" is equivalent to 3 to 5 tons of soil loss per acre per year.

The RUSLE 2 equation is published by NRCS, and is available from NRCS. Copies are on file with the department, the secretary of state and the revisor of statutes.

**(3) NUTRIENT MANAGEMENT PLAN.** (a) A landowner shall have and follow an annual nutrient management plan when applying nutrients to any field after the date specified in par. (h). A nutrient management plan shall comply with this subsection.

(b) The plan shall include every field on which the landowner mechanically applies nutrients.

(c) A nutrient management planner qualified under s. ATCP 50.48 shall prepare or approve the plan.

**Note:** A landowner who has the knowledge and skills described in s. ATCP 50.48(1) may prepare his or her own nutrient management plan. ATCP 50.48 does not require a planner to obtain a state certification, complete a training program or hold specific professional credentials. Persons holding certain credentials are presumed to be qualified, but other persons may also demonstrate their qualifications by preparing sound nutrient management plans. A person may not misrepresent himself or herself as a qualified nutrient management planner.

(d) The plan shall be based on soil nutrient tests conducted at a laboratory certified under s. ATCP 50.50.

(e) The plan shall comply with the NRCS technical guide nutrient management standard 590 dated March, 1999.

**Note:** The checklist in *Appendix C* may be used to gather information for a nutrient management plan. NRCS technical guide nutrient management standard 590 (March, 1999) is reproduced in *Appendix D*. That standard is a nitrogen-based standard. However, NRCS is in the process of revising it to incorporate a phosphorus-based standard. The department will initiate rulemaking to adopt the NRCS phosphorus-based standard by January 1, 2005 if NRCS has adopted that standard by that date.

(f) The plan may not recommend nutrient applications that exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin-extension in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809 (1998), unless the nutrient management planner can show that one or more of the following circumstances justifies the recommended application:

1. A soil or tissue test reveals a specific nutrient deficiency.
2. Excess nutrients are the result of an unforeseen change in the type of crop planted.
3. Excess nutrients are the result of prior manure applications.
4. Organic nutrients are the only nutrients applied to the field.
5. Excess nutrients from organic nutrient applications will be used later in the planned crop rotation.
6. Corn after corn is conservation tilled with greater than 50% residue after planting.
7. Starter fertilizer is properly applied to row crops.
8. The crop is irrigated.
9. Other special agronomic conditions documented by the planner.

**Note:** Appendix B contains a convenient summary of UWEX publication A-2809, for selected crops. You may obtain the complete publication and the summary from your county extension agent. The complete publication is also on file with the department, the secretary of state and the revisor of statutes.

(g) The plan shall be consistent with any nutrient management plan required under ch. NR 113, 204 or 214 if the landowner applies septage, municipal sludge, industrial waste or industrial byproducts to the land. A landowner is not required to have a nutrient management plan under this subsection if the landowner applies only septage, municipal sludge, industrial waste or industrial byproducts according to ch. NR 113, 204 or 214.

(h) Paragraph (a) first applies on the following dates for the following lands:

1. January 1, 2005 for land located in watersheds draining to outstanding or exceptional resource waters designated in ch. NR 102.
2. January 1, 2005 for land located in watersheds draining to impaired waters that DNR has listed pursuant to 33 USC 1313 and 40 CFR 130.7, if the impairment relates to excessive nutrients.

**Note:** The list under subd. 2 is known as the "303 (d) list of impaired waters." Appendix A contains a map showing the watersheds that drain to listed waters.

3. January 1, 2005 for land located in source water protection areas defined in s. NR 243.03.

4. January 1, 2008 for other lands, except that it first applies to new cropland as described by s. NR 151.09 (4) (b) on October 1, 2003.

**Note:** The delayed effective dates under par. (h) correspond to the delayed effective dates under s. NR 151.07.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.06 Installing conservation practices.**

**(1) GENERAL.** A landowner may use any of the following to comply with s. ATCP 50.04, unless s. ATCP 50.04 mandates a specific practice:

(a) Conservation practices identified in subch. VIII or the NRCS technical guide.

(b) Other conservation practices that comply with s. ATCP 50.04.

**(2) FUNDED PRACTICES.** Conservation practices for which a landowner receives a cost-share grant under this chapter shall comply with subch. VIII.

**Note:** A county land conservation committee can provide landowners with a helpful document called "Farmland Conservation Choices: A Guide to Environmentally Sound Practices for Wisconsin Farmers." The committee can also recommend conservation practices that are appropriate for the landowner's farm. Cost-share grants may be available to help landowners install or maintain recommended practices. Landowners may contact their county land conservation committee to apply for cost-share grants. If a landowner receives a cost-share grant for a conservation practice, that practice must comply with subch. VIII.

Counties have land and water resource management plans to promote compliance with farm conservation requirements (see s. ATCP 50.12). Counties will seek voluntary compliance and will offer information, cost-sharing and technical assistance to help landowners comply.

As a last resort, a county may seek enforcement action against a landowner who refuses to implement required conservation practices. A county may not seek enforcement action until it complies with applicable cost-sharing requirements under s. ATCP 50.08. A county may pursue any of the following enforcement options, as appropriate:

- The county may suspend a violator's eligibility for farmland preservation tax credits (see s. ATCP 50.16(6)).
- DNR may issue a notice of discharge, requiring a violator to obtain a pollution discharge permit from DNR (see ch. NR 243).
- The department of justice or a district attorney may file a civil forfeiture action against the violator (see s. 281.98, Stats.).
- The county may take action to enforce its own ordinance, if any.
- A town, city or village may take action to enforce its own ordinance, if any.

County compliance procedures should be consistent with this chapter and ss. NR 151.09 and 151.095. A county should spell out compliance procedures in its land and water resource management plan, as provided in s. ATCP 50.12(2). The department and DNR will work with counties to develop suggested guidelines for county compliance programs.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.08 Cost-sharing required. (1) GENERAL.**

A landowner is not required to do any of the following, under s. ATCP 50.04, unless the landowner receives a bona fide offer of cost-sharing:

(a) Discontinue or modify cropping practices on existing cropland. In this paragraph, "existing cropland" has the meaning given in s. NR 151.09 (4) (b).

**Note:** Under DNR rules, a landowner is normally entitled to cost-sharing if the landowner is required to discontinue or modify cropping practices on "existing cropland" in order to comply with a DNR performance standard. Other cropland must comply with relevant DNR performance standards, regardless of the availability of cost-sharing. Under DNR rules:

- Land qualifies as "existing cropland" if it was being cropped on the effective date of the relevant DNR performance standard, and has never complied with that performance standard since that date.
- If cropland *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as "existing cropland" for cost-share purposes under that performance standard. If the cropland later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.
- Land not cropped on the effective date of a DNR performance standard, but returned to cropping at a later date, may qualify as "existing cropland" if it is returned to cropping within 10 years after cropping was halted.

• Cropland enrolled in a federal conservation program on October 1, 2002 qualifies as "existing cropland" when it comes out of the federal program.

A landowner may be *eligible* for cost-sharing, even if the landowner is not *entitled* to cost-sharing under par. (a). A county has considerable discretion in its use of DATCP cost-share funds, subject to this chapter. See subch. V of this chapter.



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(b) Discontinue or modify an existing livestock facility or operation. In this paragraph, "existing livestock facility or operation" has the meaning given in s. NR 151.095 (5) (b).

**Note:** Under DNR rules, a landowner is normally entitled to cost-sharing if the landowner is required to discontinue or modify an "existing" livestock facility or operation in order to comply with a DNR performance standard. Other livestock facilities and operations must comply with DNR performance standards, regardless of the availability of cost-sharing. Under DNR rules:

- A livestock facility or operation qualifies as an "existing" facility or operation if it existed on the effective date of the DNR performance standard, and has never complied with that performance standard since that date.

- If a livestock facility or operation *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as an "existing" facility or operation for cost-share purposes under that performance standard. If the facility or operation later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.

- A livestock facility that existed but held no livestock on the effective date of a DNR performance standard may qualify as an "existing" facility if it is restocked within 5 years after livestock were last present.

- If a landowner voluntarily expands or alters a livestock facility after the effective date of a DNR performance standard, the newly constructed portion of the facility will not qualify as an "existing" facility for cost-share purposes under that performance standard. (There are limited exceptions.)

A landowner may be *eligible* for cost-sharing, even if the landowner is not *entitled* to cost-sharing under par. (b). A county has considerable discretion in its use of DATCP cost-share funds, subject to this chapter. See subch. V of this chapter.

**(2) COST-SHARE AMOUNT.** A cost-share offer under sub. (1) shall cover at least 70% of the landowner's cost to install and maintain each required conservation practice, or 90% of the landowner's cost if there is an economic hardship under s. ATCP 50.42 (4).

**Note:** See ss. 92.07 (2), 92.105 (1), 92.15 (4) and 281.16 (3) (e), Stats. Subsection (1) requires a bona fide offer of cost-sharing, not necessarily an acceptance. A county may impose a reasonable deadline by which a landowner must accept or reject the county's bona fide cost-sharing offer under sub. (1). See s. ATCP 50.54 (2) related to cost-sharing for conservation practices required under a county or local ordinance.

The minimum cost-share requirement under subs. (1) and (2) does *not* apply if a landowner *voluntarily* installs a cost-shared practice. In a voluntary transaction, the county is free to negotiate a grant amount with a landowner (up to the *maximum* amounts provided in s. ATCP 50.42). But if a county *requires* a landowner to install a conservation practice, the county must comply with applicable cost-share requirements under subs. (1) and (2). The cost-share grant may come from one or more sources, as provided under sub. (7).

**(3) LANDOWNER'S COST.** A landowner's cost to install and maintain a conservation practice includes all of the following that apply:

- (a) The landowner's reasonable and necessary expenditures to install and maintain the conservation practice. This includes eligible installation costs identified in subch. VIII, and costs for engineering services under s. ATCP 50.40 (7).

- (b) The reasonable value of necessary labor, equipment and supplies provided by the landowner in the installation and maintenance of the conservation practice. This does not include normal operating routines such as clean-outs of barnyards, storage facilities and gutters.

- (c) The reasonable value of mowing provided by the landowner, up to a maximum of 2 mowings per year and \$10 per mowing, if that mowing is necessary to maintain the conservation practice.

- (d) The landowner's cost to take or keep land out of agricultural production, if the landowner must take or keep more than ½ acre out of agricultural production in order to install or maintain the conservation practice. The landowner's cost, determined on the date of the cost-share contract, equals the sum of the annual costs that the landowner will incur over the maintenance period specified in the cost-share contract. The landowner's annual cost, for each year of the maintenance period, equals the number of affected acres multiplied by the per-acre weighted average soil rental rate in the county on the date of the cost-share contract. This paragraph does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

**Note:** If a county requires a landowner to install a conservation practice that changes an "existing" agricultural operation, the county must offer cost-sharing. If the cost-shared practice is a capital improvement, the landowner must agree to maintain it for at least 10 years. The cost-share contract must pay the required minimum share of the landowner's cost under sub. (3). If the landowner must take more than

½ acre out of production, the landowner's cost includes the cost of taking that land out of production.

After the contract maintenance period has expired, the landowner may resume production in the affected area unless the parties enter into a new cost-share contract to keep the land out of production (see sub. (5)(a)). The parties may negotiate the term of each contract, as long as each contract specifies a maintenance term of at least 10 years. If the landowner wishes to take advantage of the CREP-equivalent payment for riparian land under sub. (4), the landowner must agree to keep the land out of production for at least 15 years, or in perpetuity.

The United States department of agriculture, farm service agency, has determined the weighted average soil rental rate for each county, on form CRP-2. See s. ATCP 50.01(39).

Land is not taken "out of agricultural production," for purposes of sub. (3), if the landowner is free to use it for pasture, hay production and cropping subject to residue management (see s. ATCP 50.01(14)).

**(4) RIPARIAN LAND TAKEN OUT OF PRODUCTION; CREP-EQUIVALENT PAYMENT.** (a) If a landowner must take or keep more than ½ acre of riparian land out of agricultural production in order to install or maintain a conservation practice, the cost-share offer under sub. (1) for that conservation practice shall be at least equal to the amount that would be offered under the CREP program if the affected lands were enrolled in that program, regardless of whether the lands are actually eligible for the CREP program.

- (b) Paragraph (a) does not apply unless the landowner agrees to keep the land out of agricultural production for 15 years, or in perpetuity, under contract terms equivalent to those that apply under the CREP program.

- (c) Paragraph (a) does not apply to a cost-share offer made after the CREP program expires.

**Note:** The CREP program is the combined state-federal conservation reserve enhancement program administered by the department and the United States department of agriculture (see ATCP 50.01(7)). Under the CREP program, lands are enrolled for 15 years or in perpetuity. Lands enrolled in perpetuity are subject to a permanent conservation easement.

Land is not taken "out of agricultural production," for purposes of sub. (4) if the landowner is free to use it for pasture, hay production and cropping subject to residue management (see s. ATCP 50.01(14)).

- (d) Paragraph (a) does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

**(5) EXEMPTIONS.** The cost-sharing requirement under sub. (1) does not apply to any of the following:

- (a) A conservation practice that has already been cost-shared for at least 10 years. This exemption does not apply to costs under sub. (3) (d).

**Note:** For example, if a county has already paid a landowner to install and maintain a manure storage system for at least 10 years (see s. ATCP 50.62(5)(f)), the county may require the landowner to maintain the facility in subsequent years without further cost-sharing. The county has the burden of showing that it has already paid the landowner.

The rule is different if the county requires a landowner to take more than ½ acre of land out of agricultural production in order to install or maintain a conservation practice. Even if a county has *already paid* a landowner to install and maintain that conservation practice for at least 10 years, the county must *continue* to cost-share lost production if the county *requires* the landowner to keep the land out of production in subsequent years. Land is not taken "out of agricultural production," for cost-sharing purposes, if the landowner is free to use it for pasture, hay production and cropping subject to residue management (see s. ATCP 50.01 (14)).

- (b) The following conservation practices if those practices have already been cost-shared for at least 4 years:

1. Contour farming as defined in s. ATCP 50.67 (1).
2. Cropland cover as defined in s. ATCP 50.68 (1).
3. Nutrient management as defined in s. ATCP 50.78 (1).
4. Pesticide management as defined in s. ATCP 50.79 (1).
5. Residue management as defined in s. ATCP 50.82 (1).
6. Strip-cropping as defined in s. ATCP 50.89 (1).

**Note:** For example, if a county has already paid a landowner to implement nutrient management for at least 4 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost-sharing. The same holds true for other "soft" practices under par. (b) if those practices are needed to meet the conservation standards under s. ATCP 50.04. The county has the burden of showing that it has already paid the landowner to maintain the conservation practice for at least 4 years.

- (c) Conservation practices or costs for which cost-sharing is prohibited under s. ATCP 50.40 (3) (b) or subch. VIII.

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(d) Conservation practices or costs to correct a landowner's criminal or grossly negligent discharge of pollutants to waters of the state.

(e) Conservation practices required by a WPDES permit issued under ch. NR 243.

**(6) COMPLIANCE ACTIONS NOT AFFECTED.** Subsection (1) does not limit any of the following:

(a) An emergency or interim response to a pollution discharge, to prevent or mitigate imminent harm to waters of the state.

(b) County action under s. ATCP 50.16 (6) to suspend a landowner's eligibility for farmland preservation tax credits, if the landowner fails to comply with conservation standards under s. ATCP 50.16 (1).

(c) Enforcement of an existing cost-share contract.

**(7) COST-SHARE GRANT SOURCES.** A grant from any public or private source, or combination of sources, may be counted as part of a cost-share grant under sub. (1). A loan is not a grant.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

### Subchapter III — County Soil and Water Program

**ATCP 50.10 County program;general. (1) PROGRAM ELEMENTS.** Every county land conservation committee shall establish and maintain a county soil and water conservation program. The program shall include all of the following elements:

(a) A county land and water resource management plan under s. ATCP 50.12, and a program to implement that plan.

(b) County soil and water conservation standards, and a program to implement those standards.

**Note:** A county's land and water resource management plan under s. ATCP 50.12 should identify the county's strategy to implement the farm conservation practices required under s. ATCP 50.04. See s. ATCP 50.16 related to county standards for lands covered by the farmland preservation program under ch. 91, Stats. See s. ATCP 50.14 and subch. VII related to county ordinances.

(c) A program to prepare and submit annual reports under s. ATCP 50.18 and annual grant applications under s. ATCP 50.20.

(d) A program to receive, distribute and account for soil and water resource management grants under this chapter.

(e) A procedure to ensure that conservation practices funded under this chapter are designed and installed according to this chapter.

(f) An accounting and recordkeeping system under s. ATCP 50.22.

(g) An information and education program to promote effective soil and water resource management.

(h) Other program elements, if any, required under this chapter.

**(2) COORDINATION.** A county land conservation committee shall, to the extent practicable, coordinate the program elements under sub. (1) with each other and with all of the following:

(a) The county's land information and modernization program under ss. 16.967 and 59.72 (3), Stats.

(b) The related activities of NRCS, state agencies and other governmental entities in that county.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.12 Land and water resource management plan. (1) REQUIREMENT.** A county land conservation committee shall prepare and submit, for department approval, a land and water resource management plan. The department shall approve the county plan before allocating any funds to the county under subch. IV.

**(2) PLAN CONTENTS.** A land and water resource management plan shall describe all of the following in reasonable detail:

(a) Water quality and soil erosion conditions throughout the county. The plan shall include water quality assessments available from DNR, if any.

(b) State and local regulations that the county will use to implement the county plan. The department may require the county to provide copies of relevant local regulations, as necessary, and may comment on those regulations.

**Note:** See state rules under chs. ATCP 48, ATCP 50, NR 120, NR 151 and NR 243.

(c) Water quality objectives for each water basin, priority watershed as defined in s. 281.65 (2) (c), Stats., and priority lake as defined in s. 281.65 (2) (be), Stats. The county shall determine water quality objectives in consultation with DNR.

(d) Key water quality and soil erosion problem areas. The county land conservation committee shall identify key water quality problem areas in consultation with DNR.

(e) Conservation practices needed to address key water quality and soil erosion problems.

(f) A plan to identify priority farms in the county.

**Note:** The identification of priority farms may vary between counties, depending on local conditions, strategies and information. A county should focus on identifying or working with the following farms, or other categories of farms that the county identifies in its plan:

- Critical sites that DNR designates under s. 281.65(4)(g)8.am., Stats.

- Farms subject to a DNR notice of intent under s. 281.20, Stats., or notice of discharge under ch. 283, Stats.

- Farms located in watersheds draining to waters that DNR has listed pursuant to 33 USC 1313. This is also known as the "303(d) list of impaired waters." *Appendix A* contains a map showing the watersheds that drain to listed waters.

- Farms that have large numbers of livestock, or significant problems with manure management.

- Farms making clearly excessive nutrient applications.

- Farms with clearly excessive rates of cropland erosion.

(g) County strategies to encourage voluntary implementation of conservation practices under s. ATCP 50.04. County strategies may include information and education, cost-sharing, technical assistance and other strategies.

(h) Compliance procedures, including notice, hearing, enforcement and appeal procedures, that will apply if the county takes action against a landowner for failure to implement conservation practices required under this chapter, ch. NR 151 or related local regulations.

**Note:** See ss. ATCP 50.04 to 50.08 and subch. VII.

(i) The county's multi-year workplan to implement the farm conservation practices under s. ATCP 50.04, and achieve compliance with performance standards under ch. NR 151. The plan shall identify priorities and expected costs.

**Note:** The county workplan under par. (i) should be based on a reasonable assessment of available funding and resources.

(j) How the county will monitor and measure its progress under par. (i).

(k) How the county will provide information and education related to land and water conservation, including information related to farm conservation practices and cost-share funding.

(L) How the county will coordinate its land and water conservation program with federal, state and local agencies.

**Note:** The department and DNR will work with counties to develop more detailed guidelines and suggestions for county land and water resource management plans, but individual counties have some flexibility and discretion to propose plans that are appropriate for their local conditions.

**(3) PLAN DEVELOPMENT.** A county land conservation committee, when preparing a land and water resource management plan, shall do all of the following:

(a) Appoint and consult with a local advisory committee of interested persons.

**Note:** A local advisory committee should reflect a broad spectrum of public interests and perspectives. For example, it could include:

- Affected farmers, businesses and landowners.

- Agricultural, business, environmental, civic and recreational organizations.

- Federal, state, local and tribal officials.

- The university of Wisconsin and other educational institutions.

(b) Assemble relevant data, including relevant land use, natural resource, water quality and soil data.

(c) Consult with DNR.

**Note:** The county land conservation committee should normally consult with the appropriate DNR basin team.

(d) Assess resource conditions and identify problem areas.

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- (e) Establish and document priorities and objectives.
- (f) Project available funding and resources.
- (g) Establish and document a plan of action.
- (h) Identify roles and responsibilities.

**(4) PUBLIC NOTICE AND HEARING.** Before a county land conservation committee submits a land and water resource management plan for department approval, the committee shall do all of the following:

- (a) Hold at least one public hearing on the plan.
- (b) Make a reasonable effort to notify landowners affected by committee findings under sub. (2) (d) and (e), and give them an opportunity to present information related to the accuracy of the committee's findings.

**Note:** The county land conservation committee should consult with the department before holding public hearings on a land and water resource management plan.

**(5) PLAN APPROVAL.** The department shall review a county land and water resource management plan, and shall approve or disapprove the plan after consulting with the LWCB. The department shall review the plan based on the criteria identified in this section, s. ATCP 50.30 (3) and s. 92.10 (6), Stats. The secretary shall sign the order approving or disapproving the county plan. The department shall approve a plan for a specified period of time that shall not exceed 5 years, subject to conditions that the department specifies in the order. The department's approval does not take effect if the county board does not approve the county plan.

**Note:** The county board may approve the county land and water resource management plan before or after the department approves the plan. The plan approved by the county board must be the same plan approved by the department. If the department requires changes to a plan previously approved by the county board, the department's approval does not take effect until the county board approves the modified plan.

**(6) PLAN IMPLEMENTATION.** The department may review county implementation of an approved county land and water resource management plan. The department may consider information obtained in its review when it makes annual grant allocations to counties under subch. IV.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.14 County ordinances.** A county may, by ordinance, require landowners to implement conservation practices required under s. ATCP 50.04. A county shall comply with applicable requirements under subch. VII.

**Note:** See county authority under ss. 59.69, 59.692, 92.11, 92.15, 92.16 and 92.17, Stats. This section does not expand a county's statutory authority. A county ordinance implementing conservation practices under s. ATCP 50.04 should be reasonably consistent with s. ATCP 50.04. A county livestock ordinance must comply with s. ATCP 50.60 and s. 92.15, Stats. DATCP may review and comment on a county ordinance (see ss. ATCP 50.12 and 50.54). Cost-sharing under a local ordinance must be at least equivalent to cost-sharing under s. ATCP 50.08 (see s. ATCP 50.54).

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.16 Farmland preservation program; conservation standards. (1) STANDARDS REQUIRED.** (a) A county land conservation committee shall adopt soil and water conservation standards, under s. 92.105, Stats., for all lands for which landowners claim farmland preservation tax credits under subch. IX of ch. 71, Stats. The standards shall incorporate and be consistent with the farm conservation practices required under s. ATCP 50.04.

**Note:** See ss. 91.80 and 92.105, Stats. Under the farmland preservation program, an "owner" of "eligible farmland" (as defined in ss. 91.01(9) and (6), Stats.) may claim farmland preservation tax credits if the land is covered by a farmland preservation agreement or exclusive agricultural zoning ordinance. (The LWCB must certify the ordinance.) To claim the tax credits, the "owner" must comply with county soil and water conservation standards approved by the LWCB. Section ATCP 50.16 requires the county to incorporate, in the county's standards, the farm conservation practices required under s. ATCP 50.04. The county standards must be consistent with s. ATCP 50.04.

(b) The LWCB may deny or withdraw certification, under s. 91.06, Stats., of an exclusive agricultural zoning ordinance in a county that fails to comply with par. (a).

(c) The department may refuse to enter into farmland preservation agreements with landowners in a county that fails to comply

with par. (a). The department may also deny funding under this chapter to any county that fails to comply with par. (a).

**(2) PUBLIC HEARING.** A county land conservation committee shall hold a public hearing whenever the committee proposes to adopt or amend soil or water conservation standards under sub. (1) (a).

**Note:** A county land conservation committee should consult with the department before holding a public hearing on proposed soil or water conservation standards or amendments.

**(3) LWCB APPROVAL.** (a) County soil and water conservation standards and amendments under sub. (1) are not effective until approved by the LWCB.

(b) A county land conservation committee may submit a proposed standard or amendment to the department, for approval by the LWCB. The department shall submit the proposed standard or amendment to the LWCB and shall recommend approval, conditional approval or disapproval. The department shall provide the LWCB with a proposed decision, including proposed findings, proposed conclusions and a proposed order.

(c) The LWCB shall issue a written decision approving, conditionally approving or disapproving a proposed standard or amendment under sub. (1). The LWCB may disapprove a proposed standard or amendment for any of the following reasons:

1. The standard or amendment fails to comply with s. 92.105, Stats., or this chapter.
2. The standard or amendment does not reasonably conform to guidelines that the LWCB has established under s. 92.105 (2), Stats.
3. The standard or amendment is arbitrary or capricious.
4. The county land conservation committee has failed to provide the department or the LWCB with requested information that is reasonably relevant to the LWCB's review of the standard or amendment.

**Note:** Under s. 227.42, Stats., a county land conservation committee may request a contested case hearing on an LWCB decision that is adverse to the committee. If the LWCB grants the hearing request, it may ask the department to appoint an impartial hearing examiner to conduct the hearing. The LWCB may affirm or modify its decision based on the hearing record. A county land conservation committee may also seek judicial review under ch. 227, Stats.

**(4) FARM CONSERVATION PLANS.** A county land conservation committee may enter into a farm conservation plan with a landowner. A landowner meets the conservation standards under sub. (1) if the landowner implements a farm conservation plan that will achieve full compliance with those standards within 5 years.

**(5) MONITORING COMPLIANCE.** (a) A county land conservation committee may inspect a landowner's compliance with the conservation standards under sub. (1) and any farm conservation plan under sub. (4). A county land conservation committee shall inspect each landowner's compliance with the conservation standards under sub. (1) at least once every 6 years, or on another basis that the secretary approves in writing after consulting the LWCB.

(b) A county land conservation committee may ask a landowner to certify, on an annual or other periodic basis, that the landowner is complying with the conservation standards under sub. (1) and any farm conservation plan under sub. (4). A landowner shall certify compliance on a form provided by the committee.

**(6) NOTICE OF NONCOMPLIANCE.** (a) A county land conservation committee shall issue a written notice of noncompliance to a landowner if the committee finds that the landowner has done any of the following:

1. Failed to comply with applicable standards under sub. (1).
2. Failed to comply with a farm conservation plan under sub. (4).
3. Failed to permit a reasonable inspection under sub. (5) (a).
4. Failed to certify compliance in response to a committee request under sub. (5) (b).

(b) A county land conservation committee shall issue a notice of noncompliance under par. (a) on a form provided by the department. The notice shall disclose all of the following:



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1. The nature of the violation, and a deadline date for curing the violation.

2. That the landowner may not claim farmland preservation tax credits under subch. IX of ch. 71, Stats., unless the landowner corrects the violation.

3. That the landowner may meet with the county land conservation committee to contest or discuss the violation.

(c) If a landowner receiving a notice under par. (a) fails to cure the violation by the deadline date specified in the notice, the county land conservation committee shall issue a copy of the notice to all of the following:

1. The state of Wisconsin department of revenue.

2. The county planning and zoning committee if the land is covered by an exclusive agricultural zoning ordinance.

(d) A county land conservation committee may, at any time, withdraw a notice of noncompliance under par. (a). The committee shall give notice of the withdrawal to any agency under par. (c) that received a copy of the notice of noncompliance.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.18 Annual report.** (1) **ANNUAL REPORT.** By April 15 of each year, a county land conservation committee shall file with the department a year-end report for the preceding calendar year. The committee shall file the report on a form provided by the department. The report shall identify all of the following:

(a) The county's activities and accomplishments related to soil and water resource management during the preceding calendar year, including activities required or funded under this chapter.

(b) The county's progress toward the objectives identified in the county land and water resource management plan under s. ATCP 50.12. The report shall identify key areas of improvement, key compliance activities and key remaining problem areas.

(c) The county's financial contribution toward staffing the activities of the county land conservation committee in the preceding calendar year. The county may include contributions for employee salaries and fringe benefits, employee support costs, independent contractor fees, and training for employees and land conservation committee members. A county may not include capital expenditures, or expenditures reimbursed from other governmental entities.

(2) **FAILURE TO FILE ANNUAL REPORT.** The department may withhold funding under this chapter from a county land conservation committee that fails to file a timely annual report under sub. (1).

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.20 Annual grant application.** By April 15 of each year, a county land conservation committee shall file with the department its application for funding under this chapter for the next calendar year. The application shall comply with s. ATCP 50.26.

**Note:** The department awards grants to counties according to subch. IV.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.22 Accounting and recordkeeping.** A county land conservation committee, in consultation with the county's chief financial officer, shall establish and maintain an accounting and recordkeeping system. The accounting and recordkeeping system shall do all of the following:

(1) Fully and clearly account for the receipt, handling and disposition of all funds that the committee receives under s. 92.14, Stats., and this chapter.

(2) Document county compliance with s. 92.14, Stats., and this chapter, and each grant contract under this chapter.

(3) Include records required under s. ATCP 50.32 (9) related to annual staffing grants.

(4) Include records required under s. ATCP 50.34 (7) related to cost-share grants for conservation practices.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.24 Department review.** The department may review the activities of a county land conservation committee under this chapter. The department may do any of the following in connection with its review:

(1) Require the committee to provide relevant information requested by the department, including information from the county's annual financial and compliance audit.

**Note:** A county is currently required to have an annual, organization-wide financial and compliance audit that complies with the State Single Audit Guidelines issued by the Wisconsin department of administration. This "single audit" currently includes an audit of the county's use of funds awarded to the county under this chapter. The audit must comply with Audit Guidelines for the Soil and Water Resource Management Grant Program, issued annually by the Wisconsin department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection may conduct additional audits, as it deems necessary. The county may use funds provided under s. ATCP 50.32 to pay a proportionate share of the county's costs for annual financial and compliance audits.

(2) Require the committee to discuss, with the department, county compliance with this chapter.

(4) Inspect activities and practices funded under this chapter.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

## Subchapter IV — Grants to Counties

**ATCP 50.26 Grant applications.** (1) **ANNUAL APPLICATION.** A county land conservation committee shall apply by April 15 of each year to obtain funding under this chapter for the next calendar year. The committee shall apply to the department on a form provided by the department. The application shall comply with this section.

**Note:** The department and DNR will jointly solicit grant applications from county land conservation committees under ss. 92.14, 281.65, and 281.66, Stats. The department and DNR will distribute grant application forms as soon as possible prior to January 31 of each year, for return by April 15 of that year. The department and DNR will prepare a joint allocation plan after reviewing county grant applications. The department and DNR will make annual grant allocations after obtaining LWCB recommendations on their draft allocation plan.

Before it distributes grant application forms to the counties, the department will consult with county representatives regarding the department's potential funding priorities. The department will then give notice to all counties of its potential priorities when it distributes grant applications to the counties. The department may modify its potential priorities based on the actual grant applications that the counties submit.

(2) **ANNUAL STAFFING GRANT.** A county land conservation committee may request funding for county staff and support, including funding for employees and independent contractors who work for the county land conservation committee. The request shall identify all of the following:

(a) The activities for which the county seeks funding. These may include activities under this chapter, CREP program activities, and priority watershed activities previously funded under ch. NR 120.

**Note:** The Wisconsin legislature restructured the state's nonpoint source pollution abatement program in 1997 and 1999. As part of that restructuring, DNR is phasing out its priority watershed program under ch. NR 120.

DNR will continue to provide cost-share funding for projects in priority watersheds established prior to July 1, 1998. But DNR will establish no new priority watershed projects, and has established no new projects since July 1, 1998. DNR will no longer provide funding for county and local government staff engaged in the priority watershed program.

The department of agriculture, trade and consumer protection provides grants to pay for county soil and water conservation staff. Under the redesigned nonpoint source pollution abatement program, the department will also fund county staff who undertake projects funded through s. 281.65, Stats., formerly DNR's priority watershed program. Funding for county staff will be included in the department's annual staffing grants to counties.

Within the limits of available funds, the department will attempt to ensure continuity of staffing for priority watershed projects. See s. ATCP 50.32(5)(b). Staffing grants for priority watershed projects will be phased out as those projects are completed. A schedule of priority watershed completion dates is shown in *Appendix F*.

With the department's permission, a county may reallocate staff funds to local governments or tribes within the county. See s. ATCP 50.32(1).

(b) The amount of funding requested for activities under par. (a), including staff salaries and fringe benefits, contractor fees, training and eligible support costs.

**Note:** See s. ATCP 50.32 related to annual staffing grants. Contractor fees include costs to hire independent contractors such as engineers, nutrient management planners, computer specialists, information and education specialists and other consultants who work for the county land conservation committee but are not county employees.

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**(3) FUNDING FOR CONSERVATION PRACTICES.** A county land conservation committee may request funding for cost-share grants to install conservation practices. The request shall include all of the following:

(a) The purposes for which the county proposes to award cost-share grants to landowners.

(b) The amount of funding requested for cost-share grants to landowners.

**Note:** See s. ATCP 50.34 related to funding for conservation practices.

**(4) OTHER INFORMATION.** A county land conservation committee may include, with its grant application under sub. (1), any other information that the committee wishes to provide in support of its grant application. The department may ask the committee to provide additional information as necessary.

**Note:** Under s. 92.14 (10), Stats., the department may award a grant to any person (not just a county) for information, education, training and other services related to the administration of this chapter. Grant applicants must apply by April 15 of each year for funding in the next calendar year. See s. ATCP 50.36.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.28 Annual grant allocation plan. (1) PLAN REQUIRED.** The department shall allocate grants under this chapter according to an annual grant allocation plan. The secretary shall approve the grant allocation plan. The plan shall specify, for the next calendar year, all of the following:

(a) The total amount available to the department for possible allocation under the plan, including the subtotal amount from each of the following sources:

1. General purpose revenues appropriated under s. 20.115 (7) (c), Stats.
2. Segregated fund revenues appropriated under s. 20.115 (7) (qd), Stats.
3. Bond revenues appropriated under s. 20.866 (2) (we), Stats.
4. Other legislative appropriations.
5. Gifts and grants accepted under s. 92.05 (2) (a), Stats.

(b) The total amount allocated under the plan, and the subtotal amount allocated from each of the sources identified under par. (a).

(c) The amounts allocated to counties for annual staffing grants under s. ATCP 50.32. This shall include all of the following:

1. The total amount allocated to counties under s. ATCP 50.32, and the subtotal amount allocated from each relevant fund source under par. (a).
2. The total amount allocated to each county, and the subtotal amount allocated to that county from each relevant fund source under par. (a).
3. An explanation for the allocations, including any material differences in allocations between counties.

**Note:** The department must prepare an environmental assessment on its annual grant allocation plan, and may explain grant allocations in the environmental assessment. See s. ATCP 3.02 (1) (h).

(d) The amounts allocated to counties under s. ATCP 50.34 to fund conservation practices by landowners. This shall include all of the following:

1. The total amount allocated to counties under s. ATCP 50.34, and the subtotal amount allocated from each relevant fund source under par. (a).
2. The total amount allocated to each county, and the subtotal amount allocated to that county from each relevant fund source under par. (a).
3. An explanation for the allocations, including any material differences in allocations between counties.

**Note:** The department may explain its allocations in the environmental assessment that accompanies the allocation plan. See s. ATCP 3.02(1)(h).

(e) The amount allocated to each non-county grant recipient under s. 92.14 (10), Stats., if any, and an explanation for each allocation. A person applying for a grant under s. 92.14 (10),

Stats., shall file a written grant application by April 15 of the year preceding the year for which the department awards the grant. The grant application shall include a proposed budget and supporting documentation. The department may require a grant applicant to apply on a form provided by the department.

**Note:** The department normally awards grants under this chapter only to counties. But under s. 92.14(10), Stats., the department may also award grants to other persons for information, education, training and other services related to the administration of this chapter.

**(2) PREPARING THE PLAN.** (a) The department shall prepare an annual grant allocation plan under sub. (1) for each calendar year. The department shall prepare the plan with DNR after reviewing county grant applications under s. ATCP 50.26.

**Note:** The department and DNR must prepare a joint grant allocation plan under ss. 92.14, 281.65 and 281.66, Stats. DATCP will prepare its portion of the joint allocation plan according to this section. DATCP and DNR will jointly submit their portions of the annual grant allocation plan to the LWCBC for its recommendations. The DATCP and DNR secretaries will then approve their agencies' respective portions of the joint plan. Although neither agency is legally empowered to veto or modify the other agency's portion of the plan, the agencies will strive for agreement on the joint plan.

(b) The department shall do all of the following before the department adopts an annual grant allocation plan:

1. Provide a preliminary draft plan to DNR, the LWCBC and every county land conservation committee.

**Note:** The department will normally provide a preliminary draft plan to DNR, the LWCBC and the county land conservation committees by August 1 of the year preceding the calendar year to which the plan applies.

2. Obtain LWCBC recommendations on the annual grant allocation plan, as required under s. 92.14 (6) (b) and (d), Stats. At least 30 days before the department obtains the LWCBC's final recommendations, the department shall provide to DNR, the LWCBC and every county land conservation committee a copy of the draft plan on which the department seeks the LWCBC's final recommendations.

**Note:** If the department makes material revisions to the preliminary draft plan before seeking final LWCBC recommendations, the department will re-issue the revised draft at least 30 days before the LWCBC makes its recommendations.

(c) The department shall adopt an annual grant allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final plan may include changes recommended by the LWCBC, as well as updated estimates of project costs. The department shall provide copies of the allocation plan to DNR, the LWCBC and every county land conservation committee. The department shall report to the LWCBC any changes that the department makes to the allocation plan recommended by the LWCBC.

**(3) INELIGIBLE COUNTIES.** The department may not award a county grant under this chapter if any of the following apply:

(a) The county has failed to adopt a county land and water resource management plan under s. ATCP 50.12 (1), or lacks current department approval for that plan under s. ATCP 50.12 (5).

(b) The county has failed to submit an annual grant application required under s. ATCP 50.26.

**Note:** The department may reduce or withhold funding to counties that fail to file timely grant applications or reports, or fail to comply with other requirements under this chapter. See ss. ATCP 50.18 (2), 50.30 (3) and 50.36 (3).

**(4) GRANT PRIORITIES.** When preparing an annual grant allocation plan under sub. (1), the department shall consider the grant priorities under s. ATCP 50.30.

**(5) REVISING AN ALLOCATION PLAN.** (a) The department may revise an annual grant allocation plan after it adopts that plan under sub. (1). The secretary shall approve every plan revision. A revision may do any of the following:

1. Extend county funding for landowner cost-share contracts funded but not completed in the preceding grant year, provided that the cost-share contracts were signed by December 1 of the preceding grant year. Extensions shall comply with s. ATCP 50.34 (6).

**Note:** The department will normally grant funding extensions under subd. 1. by April 30 of each grant year, based on county extension requests filed by December



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31 of the preceding grant year. See s. ATCP 50.34(6). Staffing grants may not be extended into the next calendar year.

2. Increase the total grant to any county. The department shall give all counties notice and equal opportunity to compete for funding increases other than extensions under subd. 1.

3. Reduce a grant award to any county.

4. Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the county's agreement.

**Note:** The department will not prepare an environmental assessment on a plan revision unless the revision materially alters the original environmental assessment. The department will not ordinarily prepare an environmental assessment on a plan revision consisting solely of contract funding extensions under par. (a)1.

(b) The department shall do all of the following before it revises an annual grant allocation plan under par. (a):

1. Give written notice, and a copy of the proposed revision, to the LWCB, DNR and every county land conservation committee. The notice shall clearly identify and explain the proposed revision.

**Note:** For funding extensions under par. (a)1., the department's notice will indicate the total number and dollar value of extensions requested and granted, by county and for the state as a whole. If the department plans to deny any extension requests, the department will explain why. The department will keep a record identifying each uncompleted landowner contract for which funding is extended, and the amount of funding extended for each specified contract, but will not publish that record with its notice.

2. Obtain LWCB recommendations as required under s. 92.14 (6) (b) and (d), Stats.

**(6) DISTRIBUTING GRANT FUNDS.** The department shall enter into a grant contract under s. ATCP 50.36 with each grant recipient identified in the grant allocation plan. The contract shall conform to the allocation plan signed by the secretary. The department shall pay out grant funds according to this chapter and the grant contract.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.30 Grant priorities.** When preparing an annual grant allocation plan under s. ATCP 50.28, the department shall consider all of the following:

**(1) COUNTY PRIORITIES.** The department shall give high priority to maintaining county staff and project continuity. The department shall consider county priorities identified in the county grant application under s. ATCP 50.26 and in the county's approved land and water resource management plan under s. ATCP 50.12.

**(2) STATEWIDE PRIORITIES.** The department may give priority to county projects that address statewide priorities identified by the department and DNR. These may include:

(a) Farms that discharge pollutants to waters that DNR has listed pursuant to 33 USC 1313 and 40 CFR 130.7

**Note:** The list of waters under par. (a) is also known as the "303(d) list of impaired waters." Appendix A contains a map showing watersheds that drain to the listed waters.

(b) Farms for which the rate of cropland erosion is more than twice T-value.

(c) Farms discharging substantial pollution to waters of the state.

(d) Farms claiming farmland preservation tax credits subch. IX of ch. 71, Stats.

**(3) OTHER FACTORS.** The department may consider the following factors when determining grant allocation priorities:

(a) A county's demonstrated commitment to implementing the approved land and water resource management plan under s. ATCP 50.12, and the strength of the documentation supporting that plan.

(b) A county's demonstrated commitment to implementing the farm conservation practices required under s. ATCP 50.04.

(c) The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.

(d) The relative severity and priority of the soil erosion and water quality problems addressed.

(e) The relative cost-effectiveness of funded activities in addressing and resolving high priority problems.

(f) The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.

(g) The timeliness of county grant applications and annual reports.

(h) The completeness of county grant applications and supporting data.

(i) A county's demonstrated cooperation and commitment, including its commitment of staff and financial resources.

(j) A county's demonstrated ability to manage and implement funded projects.

(k) The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.

(L) The degree to which funded projects meet county soil and water resource management needs and state program requirements.

(m) The degree to which county activities are consistent with the county's approved land and water resource management plan.

(n) The county's annual financial contribution for soil and water resource management programs, as last reported under s. ATCP 50.18 (1) (c).

(o) Other factors relevant to the administration of this chapter.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

### **ATCP 50.32 Annual staffing grants to counties.**

**(1) GENERAL.** The department shall award an annual staffing grant to the county land conservation committee in each eligible county. With the department's written permission, a county conservation committee may reallocate staffing grant funds to another agency of the county, or to a city, village, town, county drainage board, lake district or tribe operating in the county.

**Note:** The department may award annual staffing grants from applicable appropriations under s. 20.115(7), Stats. The department may not use bond revenue funds for county staffing grants.

**(2) GRANT CONTRACT.** The department shall distribute an annual staffing grant under sub. (1) according to an annual grant contract with the county. The contract shall comply with s. ATCP 50.36 and shall include all of the following:

(a) The total grant amount under sub. (1).

(b) The subtotal amount allocated from each relevant fund source under s. ATCP 50.28 (1) (a).

(c) Grant terms and conditions, including conditions required under this section.

**Note:** Grant contracts, including grant amounts and fund sources, must conform to the grant allocation plan under s. ATCP 50.28. Bond revenues may not be used for staffing grants.

**(3) USE OF ANNUAL STAFFING GRANTS; GENERAL.** A county may use an annual staffing grant under sub. (1) in the year for which the grant is made. The county may use the grant for any of the following purposes, subject to the terms of the grant contract:

(a) Employee salaries, employee fringe benefits and contractor fees for county employees and independent contractors performing soil and water resource management activities for the county land conservation committee.

**Note:** Soil and water resource management activities may include activities under this chapter and the CREP program, activities related to "priority watersheds" under ch. NR 120, and activities related to DNR notices of discharge under ch. NR 243.

A county may contract with engineers, nutrient management planners, computer specialists, information and education specialists, consultants and other independent contractors to work on behalf of the county land conservation committee. A county may use annual staffing grant funds to pay for the services of these independent contractors.

(b) Training for county employees and land conservation committee members.

(c) County employee support costs under sub. (4).

(d) Landowner cost-share grants, to the extent authorized under sub. (11).

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**(4) STAFF SUPPORT COSTS.** An annual staffing grant may pay for any of the following county employee support costs identified in the grant application:

- (a) Mileage expenses at the state rate. A staffing grant may not be used to lease or purchase a vehicle.
- (b) Personal computers, software, printers and related devices.
- (c) A proportionate share of the costs for required financial and compliance audits.
- (d) Costs for information and education materials, newsletters, office supplies, maps and plats, photocopying, printing and postage. This does not include rent or capital expenditures.
- (e) Other staff support costs that the department identifies, in the grant application form, as being reimbursable for all counties.

**(5) GRANT AMOUNTS.** (a) The department may award different grant amounts to different counties under sub. (1), based on a consideration of factors identified in s. ATCP 50.30.

**Note:** Subject to the availability of funds, the department will normally offer each county at least the minimum staffing grant amount required in par. (b). Additional staffing grant amounts, if any, may be based on the county's annual financial contribution as last reported under s. ATCP 50.18(1)(c). But the department may also consider other factors under s. ATCP 50.30. The department has legal discretion to adjust grant awards from year to year, based on any of those factors.

(b) Subject to the availability of funds, the department shall annually offer to each eligible county at least the greater of the following:

- 1. \$85,000.
- 2. The amount awarded to that county under the 2001 allocation plan for staffing related to DNR priority watershed projects under NR 120, less any amounts awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed.

**Note:** See Appendix F for scheduled closing dates of priority watershed projects, determined as of October 6, 1998.

**(6) GRANT PAYMENTS.** (a) The department shall make grant payments under sub. (1) on a reimbursement basis. The department shall pay reimbursement within 30 days after the county land conservation committee files a valid reimbursement request under sub. (7). The department shall pay reimbursement, at the rate provided under sub. (8), on reimbursable expenditures identified in the reimbursement request. Total payments may not exceed the total grant award under sub. (1).

(b) The department may reimburse eligible costs that are incurred during the grant year and paid by January 31 of the year following the grant year. The department may not reimburse any costs incurred after December 31 of the grant year, or paid after January 31 of the following year. Unspent funds remain with the department, for distribution under a future annual allocation plan.

(c) If a county redirects the unused portion of an annual staffing grant for cost-share payments to landowners, as provided in sub. (11), the department shall reimburse county cost-share payments to landowners according to s. ATCP 50.34.

**(7) REIMBURSEMENT REQUESTS.** (a) To obtain a reimbursement payment under sub. (6) (a), a county land conservation committee shall file a reimbursement request on a form provided by the department. A county may file a reimbursement request on or after June 1 for costs incurred before June 1. A county may file a second reimbursement request for costs incurred on or after June 1. A county may file no more than 2 reimbursement requests, and shall file all reimbursement requests by February 15 of the year following the grant year.

(b) The county's chief financial officer shall sign each reimbursement request. The request shall certify that the county has fully paid the costs for which the county seeks reimbursement, and that those costs are eligible for reimbursement under this chapter and the grant contract.

(c) A reimbursement request shall specify the nature and amount of costs on which the county seeks reimbursement. If the county seeks reimbursement of employee salaries, employee fringe benefits or independent contractor fees, the request shall

specify all of the following for that employee or independent contractor:

- 1. The position number of the employee, or the contract number of the independent contractor.
- 2. The total amount of salaries and fringe benefits, or the total amount of contractor fees, on which the county seeks reimbursement.
- 3. Whether the employee or independent contractor is a first, second or subsequent position for purposes of s. 92.14 (3) and (5g), Stats.
- 4. The share of the employee or independent contractor costs that are attributable to conservation activities in priority watersheds identified under ch. NR 120, regardless of whether those activities are directly related to the DNR priority watershed program under ch. NR 120.

**Note:** Under s. 92.14 (5g) (b), Stats., the department may pay a higher reimbursement rate for "priority watershed staff" than for other staff. The department has interpreted "priority watershed staff" to include any staff engaged in conservation activities related to DNR priority watersheds (the geographic areas), regardless of whether those staff are working on the DNR priority watershed program. For example, staff working on the CREP program in priority watersheds may be claimed as "priority watershed staff."

5. The share of the employee or independent contractor costs that are attributable to other land and water resource management activities.

(d) If a county reallocates grant funds to a local government or tribe under sub. (1), the county shall submit reimbursement requests on behalf of that local government or tribe. The county shall submit and certify each reimbursement request according to this subsection, based on information that the local government or tribe certifies to the county. The department may reimburse the local government or tribe based on a valid county request under this paragraph.

**Note:** A county land conservation committee need not submit documentation supporting its certification under sub. (7), but must keep that documentation on file as required by sub. (9). The committee must make the documentation available to the department and grant auditors upon request.

**(8) REIMBURSEMENT RATE.** (a) The department shall reimburse eligible county costs for employee salaries, employee fringe benefits and independent contractor fees at the rate provided under s. 92.14, Stats.

(b) The department may reimburse eligible county employee training and support costs at 100%.

(c) For the purpose of determining reimbursement rates under s. 92.14, Stats.:

- 1. A county may choose which employees or independent contractors are considered the county's first, second and subsequent staff persons.
- 2. The department may reimburse eligible costs for the county's first designated staff person at 100%, regardless of whether that person is a priority watershed staff person.
- 3. Except as provided under subd. 2., the department may reimburse eligible costs for priority watershed staff identified under sub. (7) (c) 4. at the rate of 90%. This reimbursement rate does not apply to staff working in a priority watershed after the termination date specified as of October 6, 1998 for the DNR priority watershed project in that watershed.

4. Except as provided under subd. 2. or 3., the department may reimburse eligible staffing costs at the rate prescribed in s. 92.14 (5g) (a), Stats.

(d) A county receiving an annual staffing grant under this chapter shall maintain its annual soil and water resource management expenditures at or above the average annual amount that the county expended in the years 1985 and 1986, as required by s. 92.14 (7), Stats. A county may count, as part of its contributions under this paragraph, county expenditures for employees and independent contractors who work for the county land conservation committee. A county may not count capital improvement

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expenditures, or the expenditure of grant revenues that the county receives from other governmental entities.

**(9) RECORDS.** (a) A county land conservation committee shall keep records related to annual staffing grants under this section. The records shall document that the county used grant funds according to this chapter and the grant contract. The county shall retain the records for at least 3 years after the end of the grant year.

(b) If a county reallocates grant funds to a local government or tribe, that local government or tribe shall also keep records under par. (a).

**(10) BOND REVENUES MAY NOT BE USED FOR COUNTY STAFFING.** Bond revenue funds may not be used for an annual staffing grant under sub. (1).

**Note:** Bond revenues are those appropriated under s. 20.866(2)(we), Stats. The Wisconsin constitution limits the use of bond revenues.

**(11) REDIRECTING STAFFING GRANTS FOR COST-SHARE PAYMENTS TO LANDOWNERS.** A county may redirect a portion of its annual staffing grant to fund cost-share grants to landowners under s. ATCP 50.34 if all of the following apply:

(a) The department approves, in writing, the total staffing grant amount that the county may redirect.

(b) The county uses the redirected funds in the year for which the funds are allocated.

**Note:** The department will pay approved cost-share reimbursements according to the procedure in s. ATCP 50.34.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

### **ATCP 50.34 Grants for conservation practices.**

**(1) GENERAL.** The department may award an annual grant to each eligible county to finance county cost-share grants to landowners. The department shall award the grant to the county land conservation committee. The committee may make cost-share grants to landowners for conservation practices needed to comply with any of the following:

(a) Section ATCP 50.04.

(b) State or local regulations identified in the county's land and water resource management plan under s. ATCP 50.12 (2) (b). The committee may not use funds under this chapter to award cost-share grants for practices needed to comply with a DNR notice of intent or notice of discharge under s. 281.20 or ch. 283, Stats.

**Note:** DNR may provide cost-share funding for practices needed to comply with a DNR notice of intent under s. 281.20, Stats., or notice of discharge under ch. 283, Stats.

(c) Objectives identified in the county land and water resource management plan under s. ATCP 50.12.

**Note:** The department may award grants under sub. (1) from applicable appropriations under s. 20.115(7), Stats., or from the bond revenue appropriation under s. 20.866(2)(we), Stats. Bond revenue grants may only be used for the purposes identified in sub. (4).

**(2) GRANT CONTRACT.** The department shall make grant payments under sub. (1) according to an annual grant contract with the county. The contract shall comply with s. ATCP 50.36, and shall include all of the following:

(a) The total amount awarded under sub. (1).

(b) The subtotal amount awarded from each relevant fund source under s. ATCP 50.28 (1) (a).

**Note:** Grant contracts, including grant amounts, grant purposes and fund sources, must conform to the grant allocation plan under s. ATCP 50.28. Grant contracts may specify the use of funds, as necessary, to implement the terms of the grant allocation plan. Bond revenues may only be used for purposes identified in sub. (4).

(c) Project funding extensions under sub. (6), if any.

(d) Grant terms and conditions, including terms and conditions required under this section.

**(3) GRANT PAYMENTS.** The department shall make grant payments under sub. (1) on a reimbursement basis. The department shall reimburse the county after the county certifies that the cost-shared practice has been properly installed and paid for. To obtain reimbursement for a cost-shared practice, a county land con-

servation committee shall do all of the following on forms provided by the department:

(a) File with the department a copy of the county's cost-share contract with the landowner. The cost-share contract shall comply with s. ATCP 50.40 (8) and (9).

**Note:** The department must approve any cost-share contract that exceeds \$50,000.

(b) Certify the amount of reimbursement due.

(c) Certify, based on documentation possessed by the county, that all applicable conditions in s. ATCP 50.40 (10) to (12) and (14) are met.

**Note:** The department will provide forms that counties must use to certify the information under sub. (3). A county land conservation committee need not submit documentation supporting its certification under par. (c), but must keep that documentation on file as required by sub. (7). The committee must make the documentation available to the department and grant auditors upon request.

(d) File all reimbursement requests by February 15 of the year following the grant year.

**(4) USE OF BOND REVENUES.** (a) Bond revenue funds awarded under sub. (1) may be used for the following purposes, subject to par. (b) and the grant contract:

1. To finance cost-shared practices identified in subch. VIII, except that bond revenue funds may not be used to finance practices identified in s. ATCP 50.67, 50.68, 50.78, 50.79, 50.82 or 50.89.

2. To finance engineering services provided in connection with a cost-shared practice for which bond revenues may be used under subd. 1.

**Note:** See s. ATCP 50.40(7).

(b) The department may not use bond revenue funds to reimburse a county for services provided by county employees, or by independent contractors working for the county.

**Note:** Bond revenue funds are those appropriated under s. 20.866(2)(we), Stats. The Wisconsin constitution limits the use of bond revenue funds. Bond revenue funds must be used to finance capital improvements, not short-term practices. Bond revenue funds may not be used to finance county operations. The grant contract between the department and the county will identify the purposes for which grant funds may be used.

**(5) UNSPENT FUNDS.** The department may not use grant funds awarded to a county under sub. (1) to reimburse the county for costs that the county incurs after December 31 of the grant year, or pays after January 31 of the following year. Unspent funds remain with the department, for distribution under a future year's allocation plan.

**(6) EXTENSIONS.** (a) If a grant under sub. (1) funds a landowner cost-share contract that is signed by December 1 of the grant year but not completed by December 31 of that year, the department may extend funding for that contract in the next year's grant allocation to the county if all of the following apply:

1. The county properly contracts with the landowner by December 1 of the initial grant year.

2. The landowner has not taken any action in violation of the cost-share contract.

3. The county land conservation committee files with the department, by December 31 of the initial grant year, a written request and justification for the funding extension.

4. The department has not previously extended funding for the same contract from one grant year to another.

**Note:** The department will normally approve extensions by April 30 of each year, as a supplement to the annual grant allocation plan for that year. See s. ATCP 50.28(5).

(b) A county may not transfer a funding extension under par. (a) from one landowner cost-share contract to another. Extended funding, if not spent for the designated cost-share contract in the year of the extension, remains with the department for distribution under a future year's allocation plan.

**Note:** A county may make partial payments for completed portions of a cost-shared practice, as provided in s. ATCP 50.40(12).



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**(7) COUNTY RECORDS.** (a) A county land conservation committee shall keep all of the following records related to grants under sub. (1):

1. Copies of all county cost-share contracts with landowners, including any provisions related to operation and maintenance of installed practices.

2. Documentary proof of all information that the county land conservation committee certifies to the department under this section.

3. Documentation of all county receipts and payments under this section.

4. Other records needed to document county compliance with this section and the grant contract.

(b) A county land conservation committee shall retain cost-share records under par. (a) for at least 3 years after the committee makes its last cost-share payment to the landowner, or for the duration of the maintenance period required for the cost-shared practice under subch. VIII, whichever is longer. The committee shall make the records available to the department and grant auditors upon request.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.36 Grant contracts. (1) COUNTY GRANT CONTRACTS.** The department shall enter into an annual grant contract with a county land conservation committee for the payment of grant funds awarded to the county. The contract shall include relevant terms required under this section and ss. ATCP 50.32 and 50.34.

**(2) OTHER GRANT CONTRACTS.** (a) The department shall enter into a grant contract with every non-county grant recipient under this chapter.

**Note:** See s. ATCP 50.28(1)(e). The department normally awards grants under this chapter only to counties. But under s. 92.14(10), Stats., the department may also award grants to other persons for information, education, training and other services related to the administration of this chapter.

(b) A grant contract under par. (a) shall conform to the grant allocation plan under s. ATCP 50.28. The contract shall specify grant terms and conditions, including terms required under this chapter. The contract shall specify the products and services that the grant recipient is expected to deliver.

**(3) BREACH OF CONTRACT.** The department may withhold or demand return of grant payments if the department finds that the grant recipient has violated this chapter or breached its grant contract with the department.

**Note:** The department may seek other administrative or judicial sanctions, as appropriate. A grant recipient may appeal an administrative sanction under this section, to the extent provided under ch. 227, Stats.

**(4) CONTRACT CONTINGENT ON LEGISLATIVE APPROPRIATIONS.** Grant payments to a county land conservation committee or other grant recipient under this chapter are contingent on the continued availability of legislative appropriations to fund those payments.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

## **Subchapter V — Cost-Share Grants to Landowners**

### **ATCP 50.40 Cost-share grants to landowners.**

**(1) GENERAL.** (a) A county land conservation committee may use grant funds awarded to the county under s. ATCP 50.34 to make cost-share grants to landowners for any of the purposes authorized under s. ATCP 50.34 (1). Cost-share grants shall comply with this subchapter.

**Note:** This subchapter regulates a county's use of grant funds awarded under s. ATCP 50.34. It does not limit a county's authority to acquire and distribute cost-share grant funds from other governmental or private entities.

The department and DNR will prepare a joint allocation plan for the allocation of funds to counties under ss. 92.14, 281.65 and 281.66, Stats. Funding under this chapter is primarily aimed at rural conservation practices. DNR may provide funding for urban conservation practices that are not financed under this chapter.

(b) A county land conservation committee may determine all the following, subject to this chapter:

1. The landowners who will receive cost-share grants.

2. The conservation practices that will be cost-shared.

3. The costs, for each conservation practice, that will be shared.

4. The rate at which costs will be shared.

**Note:** If a county requires a landowner to change an "existing" agricultural practice, the county must comply with minimum cost-share requirements under sub. (2). But if a county enters into a voluntary cost-share arrangement with a landowner, the county is free to negotiate the grant amount with the landowner (up to the maximum amounts provided in s. ATCP 50.42).

**(2) COST-SHARING REQUIRED.** (a) A county may not do any of the following, under this chapter or a local regulation, unless the county land conservation committee first offers cost-sharing that is at least equal to the cost-sharing required under s. ATCP 50.08:

1. Require a conservation practice that discontinues or modifies cropping practices on existing cropland. In this paragraph, "existing cropland" has the meaning given in s. NR 151.09 (4) (b).

2. Require a conservation practice that discontinues or modifies an existing livestock facility or operation. In this paragraph, "existing livestock facility or operation" has the meaning given in s. NR 151.095 (5) (b).

(b) Paragraph (a) does not apply to a nutrient management plan required under a permit for a manure storage system voluntarily constructed by a landowner.

(c) Paragraph (a) does not limit any of the following:

1. An emergency or interim response to a pollution discharge, to prevent or mitigate imminent harm to waters of the state.

2. County action under s. ATCP 50.16 (6) to suspend a landowner's eligibility for farmland preservation tax credits, if the landowner fails to comply with conservation standards under s. ATCP 50.16 (1).

3. The enforcement of an existing cost-share contract.

**(3) COST-SHARED PRACTICES.** (a) A cost-share grant may fund conservation practices identified under subch. VIII, or other conservation practices that the department approves in writing, regardless of whether those conservation practices are required or voluntary.

**Note:** A county may package cost-share payments in a variety of ways. For example, a county might choose to negotiate a single overall payment (sometimes called an "incentive" payment) with a landowner who voluntarily agrees to maintain a combination of "soft" practices (nutrient management, residue management and contour farming, for example) as part of an overall farm conservation plan. The county may pay the landowner to continue these practices, even though the landowner has followed the same practices in the past. The county is free to negotiate the cost-share amount ("incentive" payment amount) with the landowner, as long as the arrangement is voluntary.

(b) A cost-share grant may not be used to do any of the following, except as specifically authorized under subch. VIII:

1. Pay for the installation of a conservation practice if that installation occurred before the landowner entered into the cost-share contract.

2. Correct overtopping of a manure storage facility.

3. Move a manure stack.

4. Drain wetlands, as defined in s. 23.32, Stats.

5. Increase drainage of land.

6. Dredge a harbor, lake, river or drainage ditch.

7. Prevent or clean up spills of pesticides, fertilizers or other agricultural chemicals from commercial bulk storage facilities.

8. Grow or harvest trees.

9. Install, operate or repair a septic system.

10. Install or modify a flood control structure.

11. Destroy significant wildlife habitat, unless the landowner agrees to restore the habitat at the landowner's expense.

**(4) ELIGIBLE COSTS.** A cost-share grant may pay for relevant costs identified in s. ATCP 50.08 (3) and (4), regardless of whether cost-sharing is required under sub. (2) or s. ATCP 50.08. A cost-share grant may not pay for ineligible costs identified under sub. (3) (b) or subch. VIII.

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**(5) COST-EFFECTIVE PRACTICES.** A county land conservation committee shall consider whether a cost-shared practice will be cost-effective. The committee shall consider all of the following:

- (a) The predicted conservation benefits of the practice.
- (b) The minimum practice needed to achieve the conservation objective.
- (c) The cost of the practice compared to feasible and effective alternatives.
- (d) The practical effects of the practice on the agricultural operation.

**(6) MAXIMUM COST-SHARE RATES AND AMOUNTS.** Cost-share rates and amounts may not exceed the maximum rates and amounts specified in s. ATCP 50.42.

**(7) ENGINEERING SERVICES.** (a) A cost-share grant may include funding for engineering services needed to do any of the following:

1. Design a cost-shared practice.
2. Supervise the installation of a cost-shared practice.
3. Certify that a cost-shared practice has been properly installed.

(b) A cost-share grant may reimburse the cost of engineering services under par. (a) provided by a professional engineer registered under ch. 443, Stats., or an agricultural engineering practitioner certified at the applicable rating under s. ATCP 50.46. A cost-share grant may not reimburse the cost of engineering services provided by the county land conservation committee or its agent.

(c) Funding for engineering services under par. (a) may not exceed the lesser of the following:

1. 70% of the actual cost of the engineering services.
2. 15% of the total eligible cost of the cost-shared practice, exclusive of engineering costs.

**(8) COST-SHARE CONTRACT.** A county land conservation committee shall enter into a written contract with every landowner to whom the committee awards a cost-share grant. The department shall approve, in writing, any cost-share contract that provides for more than \$50,000 in cost-share payments.

**(9) CONTRACT TERMS.** A cost-share contract under sub. (8) shall include all of the following:

- (a) The landowner's name and address.
- (b) The purpose for the cost-share grant.
- (c) The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land if cost-share payments may exceed the following applicable amount:

1. \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
2. \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
3. \$14,000 if the cost-share contract is signed on or after January 1, 2010.

(d) Specifications for the cost-shared practice, including engineering specifications for any agricultural engineering practice identified under s. ATCP 50.46 (2).

(e) The total estimated cost of the cost-shared practice. The total cost may include the cost to install the practice and the cost to maintain the practice for the period of time specified in the contract. Costs may include any applicable costs under sub. (4). A county shall use applicable cost containment procedures under sub. (16) when determining the estimated cost.

(f) The cost-share rate or amount. The cost-share rate or amount may not exceed the rate or amount allowed under s. ATCP 50.42.

(g) The amount, if any, that the county land conservation committee will pay for engineering services under sub. (7).

(h) A timetable for constructing and installing the cost-shared practice.

(i) Applicable conditions required under this section.

(j) The period of time for which the landowner agrees to maintain the cost-shared practice in return for the cost-share grant. The landowner shall agree to maintain the cost-shared practice for at least the period of time required under subch. VIII, or replace it with an equally effective practice. The landowner shall refrain, during the maintenance period, from any action that may reduce the effectiveness of the cost-shared practice.

**Note:** Subchapter VIII specifies a minimum maintenance period of 10 years for most conservation practices. But it does not specify a minimum maintenance period for the following "soft" practices:

- Contour farming (ATCP 50.67).
- Cover and green manure crop (ATCP 50.68).
- Nutrient management (ATCP 50.78).
- Pesticide management (ATCP 50.79).
- Residue management (ATCP 50.82).
- Strip-cropping (ATCP 50.89).

(k) An agreement that the landowner will repay the full amount of the cost-share grant immediately, upon demand by the county land conservation committee, if the landowner fails to operate and maintain the cost-shared practice according to the contract.

(L) If the contract provides for a cost-share grant that exceeds the following applicable amount, an agreement that the contract runs with the land and is binding on subsequent owners or users of the land for the period of time required under subch. VIII:

1. \$10,000 if the cost-share contract is signed prior to January 1, 2005.
2. \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
3. \$14,000 if the cost-share contract is signed on or after January 1, 2010.

**Note:** Subsection (14) requires the county or landowner to record, with the county register of deeds, any cost-share contract over the applicable amount in par. (L). The county may include, in the cost-share contract, a provision requiring the landowner to record the cost-share contract with the register of deeds.

(m) Provisions authorizing the county land conservation committee to stop work or withhold cost-share grant payments if the committee finds that the landowner has breached the contract.

(n) An agreement that the county land conservation committee must pre-approve, according to a procedure specified in the contract, any construction changes that may affect the terms or amount of the cost-share grant.

(o) Other terms or conditions specified by the county land conservation committee.

**Note:** The department will provide sample cost-share contracts to each county land conservation committee. County land conservation committees are encouraged to use the contract forms provided by the department.

**(10) DESIGN AND INSTALLATION.** A cost-shared practice shall be all of the following:

(a) Designed and installed according to subch. VIII and the cost-share contract.

(b) Installed in compliance with applicable construction site erosion control standards contained in the DNR Wisconsin construction site best management practice handbook, DNR Pub. WR-222 (April 1994).

**Note:** Copies of the DNR construction site best management practice handbook are on file at the department, DNR, the secretary of state and the revisor of statutes. You may purchase copies at the following address:

WI Department of Administration  
Document Sales Unit  
202 S Thornton Ave  
PO Box 7840  
Madison WI 53707-7840  
Phone: 608-266-3358  
E-mail: docsales@doa.state.wi.us.

**(11) PAYMENT CONDITIONS MET.** Before a county land conservation committee pays for any cost-shared practice, or requests any cost-share reimbursement from the department under s. ATCP 50.34 (3), the committee shall document all of the following:

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(a) That the landowner has made, for that cost-shared practice, all payments for which the landowner is responsible under the cost-share contract.

(b) That the cost-shared practice is designed and installed according to sub. (10). If the cost-shared practice is an agricultural engineering practice identified under s. ATCP 50.46 (2), one of the following shall certify in writing that the practice complies with sub. (10):

1. A professional engineer registered under ch. 443, Stats.
2. An agricultural engineering practitioner certified under s. ATCP 50.46.
3. A well driller or pump installer registered under s. 280.15, Stats., if the agricultural engineering practice consists of well construction or decommissioning.

(c) That the landowner's nutrient management plan complies with s. ATCP 50.04 (3), if the cost-shared practice includes a nutrient management plan.

**(12) PARTIAL PAYMENTS.** A county land conservation committee may make partial payments for completed portions of a cost-shared practice if all of the following apply:

(a) The committee documents, for that completed portion, the information required under sub. (11).

(b) The completed portion provides independent conservation benefits.

(c) The committee distributes no more than 90% of the total cost-share grant in partial payments.

**(13) PAYMENT RECIPIENTS.** A county land conservation committee shall make cost-share payments to the contracting landowner, except that the committee may do any of the following:

(a) Make cost-share payments by multi-party check payable to the landowner and any contractors who designed or installed a cost-shared practice for the landowner, if the landowner or any of the contractors asks the committee to do so.

(b) Make a cost-share payment to an assignee whom the landowner designates in writing.

**(14) RECORDING CONTRACTS WITH REGISTER OF DEEDS.** If a county contract with a landowner exceeds the following applicable amount, the county or the landowner shall record the contract with the county register of deeds before the county makes any cost-share payment to the landowner:

(a) \$10,000 if the cost-share contract is signed prior to January 1, 2005.

(b) \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.

(c) \$14,000 if the cost-share contract is signed on or after January 1, 2010.

**(15) LANDOWNER INSTALLATION AND MAINTENANCE.** (a) With the approval of the county land conservation committee, a landowner may personally install a cost-shared practice. The committee may give its approval if all of the following apply:

1. The landowner is competent to install the practice.
2. The landowner can install the practice at least as cheaply as other available contractors.
3. The landowner submits a qualified bid if the committee requires bidding under sub. (16) (b).

(b) If the value of a landowner's installation or maintenance service is considered for cost-sharing purposes, the landowner shall submit a detailed invoice or cost-estimate for those services.

**(16) COST CONTAINMENT.** A county land conservation committee shall adopt one or more of the following cost containment procedures, or other procedures that are equally effective, when estimating and paying for a cost-shared practice:

(a) The committee may base cost-share grants on typical or maximum acceptable costs for the conservation practice, even if actual costs are higher.

**Note:** A committee may estimate typical costs per completed practice, or per unit of labor or materials. A committee may use its own experience, or information obtained from the department or other sources, to estimate typical costs.

(b) The committee may require competitive bidding, and may determine a cost-share grant amount based on low bid cost, regardless of whether the contracting landowner selects the low bidder. The committee may specify bidding procedures that it considers appropriate. The committee shall require competitive bidding if the cost-share contract may exceed \$25,000.

**Note:** The department suggests the following bidding procedures:

- The committee must show the proposed construction site to all prospective bidders on the same day and at the same time.
- There must be at least 3 qualified bidders.
- All bids must be sealed and delivered by a bid deadline to a location specified by the committee.
- Bids must all be opened at the same time within 2 weeks after the bid deadline.
- The amount of the cost-share grant is based on the lowest qualified bid.
- The landowner may select a higher bidding contractor only if the landowner agrees to pay the difference.
- The landowner may not select a contractor who did not bid.

(c) The committee may use its own employees or agents to design, construct or install a cost-shared practice if, by doing so, it can minimize public costs related to the practice. The committee may charge the staff costs to its staffing grant award under s. ATCP 50.32, but not to its cost-share grant award under s. ATCP 50.34. If a county reallocates staffing grant funds to a city, village, town, county drainage board, lake district or tribe with the department's approval, that local government or tribe may use those staffing grant funds in the same manner.

**Note:** A local government or tribe may contract with the Wisconsin conservation corps or any other entity to install a cost-shared practice as the agent of the local government or tribe.

**(17) COMBINED GRANTS.** Cost-share grants under this chapter may be combined with grants from other federal, state, local and private sources. Department funds allocated under this chapter may be combined with DNR funds allocated under s. 281.65 or 281.66, Stats., to finance up to 70% of the total cost of a project, or up to 90% in cases of economic hardship under s. ATCP 50.42 (4). This subsection does not limit the use of cost-share funds from other sources. A cost-share grant under this chapter may not reimburse a landowner for any costs that another governmental entity is also reimbursing.

**Note:** A landowner may receive grants from 2 or more governmental entities related to the same project, provided that the landowner does not receive duplicate reimbursement of the same costs.

**(18) LAND TAKEN OUT OF AGRICULTURAL PRODUCTION; EASEMENT.** A cost-share contract to take land out of agricultural production may provide for a recorded easement to implement the contract. The easement shall be consistent with the cost-share contract, and the duration of the easement shall be consistent with the maintenance term specified in the cost-share contract. Before the landowner signs the cost-share contract, the county land conservation committee shall provide the landowner with the document that the landowner would sign to create the proposed easement. The county land conservation committee shall promptly record the easement document with the county register of deeds after the landowner signs that document.

**Note:** For example, if a county land conservation committee pays a landowner to keep a riparian buffer out of agricultural production for 15 years, the cost-share contract may require the landowner to grant a recorded easement on that riparian buffer for 15 years. If the landowner agrees to keep land out of production in perpetuity (presumably in return for a higher cost-share payment), the contract may require the landowner to grant a perpetual easement. The county land conservation committee must give the landowner a copy of the proposed easement document before the landowner signs the cost-share contract.

**(19) CONFLICT OF INTEREST PROHIBITED.** No county employee or land conservation committee member may:

(a) Take any official action substantially affecting a matter which the individual, a member of his or her immediate family, or an organization with which the individual is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of substantial benefit, direct or indirect,



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for the individual, one or more members of the individual's immediate family either separately or together, or an organization with which the individual is associated.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02; CR 04-005: am. (9) (L) Register October 2004 No. 586, eff. 11-1-04.

**ATCP 50.42 Maximum cost-share rates. (1) MAXIMUM COST-SHARE RATE.** (a) Except as provided under pars. (b) to (e), cost-share payments funded under this chapter may not exceed 70% of the total eligible costs allowed under s. ATCP 50.40 (4) to install and maintain the conservation practice for the period specified in the cost-share contract. This paragraph does not limit the use of cost-share funds from other sources.

(b) The maximum cost-share rate under par. (a) is 90% if there is an economic hardship under sub. (4).

(c) For cropping practices identified in sub. (2), a county land conservation committee may pay up to the amount authorized under this subsection or sub. (2), whichever is higher.

(d) For more than ½ acre of riparian land taken out of agricultural production to install a conservation practice, a county land conservation committee may pay a qualified landowner up to the CREP-equivalent amount authorized in s. ATCP 50.08 (4) if that amount exceeds the relevant amount authorized under this subsection.

(e) A county land conservation committee may provide cost-share funds, at the rate authorized under this subsection, to replace a cost-shared conservation practice that is damaged or destroyed by natural causes beyond the landowner's control.

**Note:** See s. ATCP 50.08 and s. 92.14 (6) (gm), Stats. Paragraphs (c) and (d) provide "short-cut" alternatives for determining cost-share payments in some cases. These methods do not require a case-by-case computation of "cost." A county is not required to use these alternative methods, except as provided in s. ATCP 50.08 (4).

**(2) CROPPING PRACTICES; MAXIMUM COST-SHARE AMOUNTS.** A county land conservation committee may pay up to the following amounts for the installation or maintenance of the following cropping practices:

(a) For contour farming, \$9 per acre per year.

(b) For cover and green manure crop, \$25 per acre per year.

(c) For strip-cropping, \$13.50 per acre per year.

(d) For field strip-cropping, \$7.50 per acre per year.

(e) For high residue management systems, no-till systems, ridge till systems and mulch till systems, \$18.50 per acre per year.

(f) For conservation plantings in riparian buffers, \$100 per acre per year.

(g) For nutrient management and pesticide management, \$7.00 per acre per year.

**Note:** For example, a cost-share contract might pay a farmer up to \$36 per acre to install and maintain a contour farming system for 4 years (\$9 per year). The county would pay the full contract amount when the contour system was installed, and the farmer would have a contract obligation to maintain the system for at least 4 years.

**(3) MAXIMUM GRANT TO RELOCATE ANIMAL FEEDING OPERATION.** No cost-share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or related practices needed to resolve or prevent water quality problems at the abandoned site, or 70% of the eligible relocation costs at the new site, whichever site cost is less. Not more than \$5,000 of the cost-share grant may be used to transport livestock from the abandoned site to the new site.

**(4) ECONOMIC HARDSHIP.** A landowner qualifies for economic hardship treatment if all the following apply:

(a) A certified public accountant or accredited financial institution certifies all the following to the county land conservation committee, based on a farm financial statement prepared according to generally accepted accounting principles:

1. The landowner is unable to make the cost-share contribution normally required of a landowner under sub. (1).

2. The landowner will be able to pay the balance of the cost to install the cost-shared practice if the landowner receives cost-sharing at the economic hardship rate.

(b) The landowner certifies, in a sworn affidavit to the county land conservation committee, that the landowner has provided to the certified public accountant or accredited financial institution under par. (a) a full and true disclosure of the landowner's financial condition, including a copy of the landowner's latest federal tax return. The landowner shall make the affidavit on a form provided by the department.

**(5) REVIEW OF ECONOMIC HARDSHIP DETERMINATION.** The department may review of an economic hardship determination under sub. (4). The landowner and the person certifying the economic hardship shall make available for department inspection or copying, at the department's request, documents used to support the economic hardship determination. The department may invalidate a determination that fails to comply with standards under sub. (4).

**Note:** The department will not copy records inspected under sub. (5) unless the department contests the validity of a determination under sub. (4) based on those records. If it becomes necessary for the department to copy records under sub. (5), the department will seek to protect those records from public disclosure.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

## Subchapter VI — Soil and Water Professionals

### ATCP 50.46 Agricultural engineering practitioners.

**(1) GENERAL.** No person, other an agricultural engineering practitioner certified under this section or a professional engineer registered under ch. 443, Stats., may certify any of the following for funding purposes under this chapter or ch. NR 120:

(a) That design specifications for an agricultural engineering practice under sub. (2) comply with standards under this chapter or s. 281.65, Stats.

**Note:** A design certification under par. (a) typically involves the preparation or approval of a design document that prescribes the installation of an agricultural engineering practice. The process typically requires the application of engineering principles and methods, and may include several planning and design components. For example, a practitioner may conduct a site inventory to gather data for the design process, may identify or confirm particular water quality problems on the site, and may evaluate the adequacy of the proposed practices to address those problems.

(b) That an agricultural engineering practice under sub. (2) has been installed according to an approved design, and according to applicable standards and specifications.

**Note:** See ss. 92.18 and 443.14(10), Stats. Registered professional engineers, persons working under the direct supervision of registered professional engineers, and employees of the NRCS may also seek certification under this section. A state or county employee certified under this section is exempt from the professional engineering registration requirements of ch. 443, Stats., when engaged in state or county activities under ch. 92, Stats., or s. 281.65, Stats., regardless of whether the activities are funded under this chapter.

**(2) AGRICULTURAL ENGINEERING PRACTICES.** For purposes of this section, an agricultural engineering practice includes any of the following:

(a) Access road.

(b) Animal trail or walkway.

(c) Crevice and sinkhole treatment.

(d) Closure of waste impoundments

(e) Dam.

(f) Diversion.

(g) Grade stabilization structure.

(h) Grassed waterway.

(i) Heavy use area protection.

(j) Lined waterway or outlet.

(k) Manure transfer system.

(l) Open channel.

(m) Pesticide and fertilizer mixing and loading facilities.

(n) Pipeline for livestock water supply.

(o) Pond.

(p) Pond sealing or lining.

(q) Roof runoff management.

(r) Sediment basin.

(s) Spring development.

(t) Stream channel stabilization.

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- (u) Streambank or shoreline protection.
- (v) Subsurface drain.
- (w) Surface drain; field ditch, main or lateral.
- (x) Terrace.
- (y) Trough or tank.
- (z) Underground outlet.
- (za) Waste storage facility.
- (zb) Wastewater treatment strip or buffer.
- (zc) Water and sediment control basin.
- (zd) Water control structure.
- (ze) Well construction or decommissioning. Notwithstanding sub. (1) (intro.), a well driller or pump installer registered under s. 280.15, Stats., may certify a well construction or decommissioning under sub. (1).

(zf) Wet detention basin.

(zg) Wetland restoration.

**(3) AGRICULTURAL ENGINEERING PRACTITIONER; CERTIFICATION.** A person who wishes to be certified as an agricultural engineering practitioner shall apply to the department or a county land conservation committee. An applicant may apply orally or in writing. The department or the county land conservation committee shall promptly refer the application to the department's designated field engineer. The field engineer shall evaluate the applicant and issue a decision granting or denying the request.

**Note:** An applicant for certification need not apply to the department's offices in Madison, but may apply directly to one of the department's field engineers. An applicant's supervisor may also forward an application to the department's field engineer.

**(4) EVALUATING APPLICANTS FOR CERTIFICATION.** (a) To evaluate an applicant under sub. (3), the department's field engineer shall complete the certification form shown in *Appendix E*. The field engineer shall rate the applicant under sub. (5) based on the applicant's demonstrated knowledge, training, experience and record of appropriately seeking assistance. Evaluations shall be fair and consistent.

(b) To evaluate an applicant, the department's field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant. The field engineer may ask engineering staff from NRCS to help evaluate an applicant.

**(5) CERTIFICATION RATING.** (a) For each type of agricultural engineering practice identified in *Appendix E*, the department's field engineer shall identify the most complex of the 5 job classes in *Appendix E* for which the applicant is authorized to do each of the following:

1. Certify that design specifications for jobs in that class comply with standards under this chapter or s. 281.65, Stats.
2. Certify that jobs in that class have been installed according to the approved design, and according to any applicable standards and specifications.

**Note:** The rating system under par. (a) is designed to be reasonably consistent with the system used by NRCS under 7 CFR 610.1 to 610.5. *Appendix E* is similar to the NRCS job approval delegation form, and identifies the controlling factors used to determine the relative difficulty of job classes. A person who is certified at a job level under par. (a) may certify his or her own work at that level for funding purposes under this chapter.

(b) If NRCS has previously rated an applicant under 7 CFR 610.1 to 610.5, the department's field engineer shall give that applicant the same initial rating. Within 18 months after the field engineer makes the initial rating, the department's field engineer shall review that rating under sub. (7).

**(6) CERTIFICATION DECISION.** (a) The department's field engineer shall act on a certification application under sub. (3) within 30 days after the field engineer receives that application, provided that the applicant promptly submits relevant information and documentation requested by the field engineer.

**Note:** When recertifying an applicant who was previously certified by the department or NRCS, the department's field engineer may raise one or more rating levels, lower one or more rating levels, or reaffirm one or more rating levels.

(b) Whenever the department's field engineer certifies an agricultural engineering practitioner, the field engineer shall issue a written certification in the form shown in *Appendix E*. The certification becomes effective when signed by all of the following:

1. The field engineer.
2. The practitioner certified.
3. The practitioner's supervisor if any.

(c) Whenever the department's field engineer denies a request under sub. (3) for a specific certification rating, the field engineer shall issue the denial in writing and shall specify the reasons for the denial.

(d) The department's field engineer shall retain a copy of each certification under par. (b), each denial under par. (c), and any other documentation received or compiled in connection with an application under sub. (3).

**(7) REVIEWING CERTIFICATION RATINGS.** (a) A department field engineer shall review each certification rating under sub. (5) at least once every 3 years, and may review a rating at any time. A field engineer shall review a rating whenever a certified agricultural engineering practitioner requests that review.

(b) Based on a review under par. (a), a department field engineer shall issue a new certification rating which reaffirms or modifies the prior rating under sub. (5). The field engineer shall provide a copy of each new rating to the person rated. The field engineer may not reduce a rating except for good cause.

(c) A field engineer shall document, in writing, his or her reasons for reducing a certification rating under sub. (5), or for refusing to make a requested rating change. The field engineer shall provide that documentation to the person rated, and to that person's supervisor if any.

**(8) APPEALS.** (a) An affected person may appeal a field engineer's action under sub. (5), (6) or (7). The affected person shall file his or her appeal in writing, with the field engineer, within 10 business days after the applicant receives notice of the field engineer's action. The appeal shall identify the specific matters in dispute and the specific basis for the appeal.

(b) Within 15 business days after the department's field engineer receives an appeal under par. (a), the field engineer shall hold an informal meeting with the appellant. The meeting may include a representative of the county land conservation committee. The field engineer may hold the informal meeting in person or by telephone.

(c) If an appeal cannot be resolved after an informal meeting under par. (b), the field engineer shall forward the appeal to a department reviewer designated by the administrator of the department's agricultural resource management division. The reviewer shall hold an informal hearing on the appeal within 10 business days after the reviewer receives the appeal, unless the applicant agrees to a later date for the informal hearing. The reviewer shall hold the informal hearing by telephone or at a location determined by the reviewer. Within 10 business days after the conclusion of the informal hearing, the reviewer shall issue a written decision which affirms, reverses or modifies the field engineer's action. The reviewer shall provide a copy of his or her written decision to the applicant. The decision shall include a notice of the applicant's right to request a contested case hearing under par. (d).

(d) If an applicant disputes the reviewer's decision under par. (c), the applicant may file a request with the department under s. 227.42, Stats., for a contested case hearing under ch. 227, Stats., and ch. ATCP 1.

**(9) SUSPENDING OR REVOKING CERTIFICATION.** (a) The department may, for cause, suspend or revoke a certification under this section. The department may summarily suspend a certification, without prior notice or hearing, if the department makes a written

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finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare.

(b) An order suspending or revoking a certification shall be signed by the secretary or the secretary's designee. Proceedings to suspend or revoke a certificate shall be conducted according to ch. 227, Stats., and ch. ATCP 1.

**Note:** See ss. 92.18(6) and 93.06(7), Stats.

(c) The department shall notify all of the following persons of any suspension or revocation under this subsection:

1. Any land conservation committee or state agency that employs the individual whose certification is suspended or revoked.

2. State and federal agencies that provide cost-share funds for agricultural engineering practices.

(d) The reduction of a certification rating under sub. (7) does not constitute a suspension or revocation under this subsection.

**(10) CERTIFICATION GUIDELINES.** The department may publish guidelines for the certification of agricultural engineering practitioners under this section. The guidelines may include suggested courses, training activities, and types of knowledge and experience that may help applicants qualify for certification at specified rating levels.

**(11) SIGNATURE AND DATE REQUIRED.** Whenever a person certified under this section approves or submits for approval any document related to the design or construction of an agricultural engineering practice under sub. (2), that person shall sign and date that document.

**(12) SCOPE OF CERTIFICATION.** No certified agricultural engineering practitioner may, for funding purposes under this chapter or s. 281.65, Stats., certify any matter under sub. (5) (a) in a job class more complex than that for which the practitioner is authorized under sub. (5) (a).

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.48 Nutrient management planners.**

**(1) QUALIFICATIONS.** To be qualified under ss. 281.65, 281.66, Stats., and this chapter, a nutrient management planner shall be knowledgeable and competent in all of the following areas:

- (a) Compliance with the NRCS technical guide.
- (b) Soil testing.
- (c) Calculating nutrient needs on a field-by-field basis.
- (d) Crediting manure, residual legume nitrogen and other nutrient sources on a field-by-field basis.
- (e) Using conservation plans.
- (f) Relevant laws related to nutrient management.
- (g) Preparing nutrient management plans according to s. ATCP 50.04 (3).

**(2) PLANNERS PRESUMPTIVELY QUALIFIED.** An individual is considered a qualified nutrient planner under sub. (1), without any action by the department, if all of the following apply:

- (a) The individual is at least one of the following:
  - 1. Recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
  - 2. Recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.
  - 3. Registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
  - 4. The holder of other credentials that the department deems equivalent to those specified under subds. 1. to 3. A landowner is presumptively qualified to prepare a nutrient management plan for his or her farm, but not for others, if the landowner completes a department-approved training course and the course instructor approves the landowner's first annual plan. The landowner shall complete a department-approved training course at least once every 4 years to maintain his or her presumptive qualification.

(b) The nutrient management planner complies with sub. (3).

(c) The department has not disqualified the nutrient management planner under sub. (4).

**Note:** The department does not affirmatively certify nutrient management planners. A nutrient management planner who meets all of the requirements under sub. (2) may represent himself or herself as a qualified nutrient planner, without any certificate from the department. A person qualified only to prepare his or her own nutrient management plan under sub. (2)(a)4. may not misrepresent that he or she is qualified to prepare nutrient management plans for others.

**(3) NUTRIENT MANAGEMENT PLANS.** (a) A qualified nutrient management planner shall prepare nutrient management plans according to s. ATCP 50.04 (3).

(b) A qualified nutrient management planner may not approve a nutrient management plan that fails to comply with s. ATCP 50.04 (3).

**(4) DISQUALIFICATION.** The department may issue a written notice to an individual, declaring that the individual is not a qualified nutrient management planner under this section. The notice shall specify the basis for the department's declaration. The department may disqualify a nutrient management planner if the planner violates sub. (3) or lacks qualifications required under sub. (1).

**Note:** A person who is named in a disqualification notice under sub. (4) may request a contested case hearing under s. 227.42, Stats., and ch. ATCP 1.

**(5) MISREPRESENTING QUALIFICATION.** No person may do any of the following, directly or by implication:

- (a) Misrepresent that an individual is a qualified nutrient management planner under this section.
- (b) Represent, contrary to a valid written notice under sub. (4), that an individual is a qualified nutrient management planner under this section.
- (c) Misrepresent that a person is qualified to perform nutrient management plans for others, if that is not the case.

**(6) RECORDS.** A qualified nutrient management planner shall keep copies of all nutrient management plans that the planner prepares or approves for funding under s. 281.65 or 281.66, Stats., or this chapter. The planner shall retain the records for at least 4 years, and shall make them available for inspection and copying by the department upon request.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.50 Soil testing laboratories. (1) CERTIFIED**

**LABORATORY.** A nutrient management plan shall be based on soil tests conducted at the university of Wisconsin or another soil testing laboratory certified by the department. The department may certify a laboratory according to this section.

**Note:** Subsection (1) does not prohibit an uncertified laboratory from performing soil tests. However, a nutrient management plan does not comply with this chapter if it is based on soil tests performed by an uncertified laboratory.

**(2) APPLYING FOR CERTIFICATION.** A laboratory operator may apply to the department for certification under sub. (1). The operator shall apply on a form provided by the department. The application shall include all of the following:

- (a) The name of the laboratory operator.
- (b) The address of every laboratory in this state for which the operator seeks certification.
- (c) The name and telephone number of the individual who is responsible for on-site administration of each laboratory under par. (b).
- (d) The soil tests, test methods, and nitrogen estimation methods used by the laboratory. The laboratory shall be capable of performing the following tests according to methods prescribed by the university of Wisconsin—extension in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX Publication A2809 (1998), and shall be capable of estimating nitrogen levels based on those tests:
  - 1. Soil pH.
  - 2. Buffer pH (SMP).
  - 3. Phosphorus (P).



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4. Potassium (K).
5. Organic matter (OM).

(e) Documentation showing that the laboratory is qualified and equipped to perform accurate soil tests and nitrogen estimates under par. (d).

(f) An agreement to comply with subs. (4) to (6).

(g) Other relevant information required by the department.

(3) **ACTION ON CERTIFICATION REQUEST.** The department shall grant or deny a certification request under sub. (2) within 30 days after the department receives a complete request. The department may grant a certification request based on information provided under sub. (2). A certification is nontransferable. A certification remains in effect until withdrawn by the department.

(4) **NUTRIENT RECOMMENDATIONS.** If a certified laboratory recommends nutrient applications to a landowner that exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin—extension in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809 (1998), the laboratory shall make those recommendations in writing and shall disclose all of the following in the same document:

(a) The landowner's name and address.

(b) The nutrient application amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin—extension. The laboratory shall disclose these amounts so the landowner can easily compare them with the laboratory's recommended amounts.

(c) The following statement, clearly and conspicuously printed adjacent to the laboratory's recommended nutrient applications:

**IMPORTANT NOTICE**

**Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.**

**Note:** Appendix B contains a convenient summary of UWEX publication A-2809, for selected crops. You may obtain the complete publication and the summary from your county extension agent. The complete publication is also on file with the department, the secretary of state and the revisor of statutes. For further information, see Appendix G.

(5) **RECORDS.** A certified soil testing laboratory shall keep records of all of the following for at least 4 years, and shall make those records available for inspection and copying by the department upon request:

(a) Records of all soil tests conducted at the laboratory.

(b) Copies of all nutrient application recommendations made by the laboratory.

(6) **LABORATORY EVALUATION.** (a) The department or its agent may review the performance of a soil testing laboratory certified under this section. The department or its agent may do any of the following as part of its review:

1. Review relevant laboratory records.
2. Evaluate laboratory facilities and methods.
3. Evaluate the proficiency of laboratory analysts.
4. Evaluate the laboratory's proficiency in testing check samples provided by the department or its agent.

(b) A laboratory operator shall cooperate with a reasonable review under par. (a).

(7) **DENYING OR WITHDRAWING CERTIFICATION.** (a) The department may deny, suspend, revoke or impose conditions on a certification

under this section if the department finds that the laboratory has done any of the following:

1. Failed to submit a complete application under sub. (2).
2. Failed to perform soil tests with reasonable accuracy.
3. Failed to comply with applicable requirements under this section.
4. Falsified relevant information.

(b) If the department denies, suspends, revokes or imposes conditions on a laboratory certification, the department shall give the laboratory operator written notice of the department's reasons for that action.

**Note:** A laboratory operator may request a hearing, pursuant to s. 227.42, Stats., and ch. ATCP 1, on the department's action under sub. (7).

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.52 Training for county staff. (1) ROLE OF THE DEPARTMENT.** The department, in consultation with the county land conservation committees and the training advisory committee appointed under sub. (2), may do any of the following to ensure adequate training of county land conservation committee staff who administer programs under this chapter or s. 281.65, Stats.:

- (a) Determine training needs and priorities.
- (b) Identify training opportunities and resources.
- (c) Make training recommendations.
- (d) Approve training programs funded under this chapter.
- (e) Coordinate the delivery of training.
- (f) Provide training and assess fees to cover training costs.

**Note:** The department may exempt county land conservation committee staff from fees that the department charges for training programs provided by the department.

(g) Issue training guidelines for certified agricultural engineering practitioners under s. ATCP 50.46 (10).

**Note:** The department guidelines may include suggested courses, training activities, and the types of knowledge and experience that may help applicants qualify for certification at specified rating levels.

(h) Distribute training funds to counties under s. ATCP 50.32.

(2) **TRAINING ADVISORY COMMITTEE.** The department shall appoint a training advisory committee to advise the department on training activities under sub. (1). The committee shall include representatives of all of the following:

- (a) DNR.
- (b) NRCS.
- (c) The university of Wisconsin—extension.
- (d) The statewide association of land conservation committees.

(e) The statewide association of land conservation committee staff.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

## Subchapter VII — Local Regulation

**ATCP 50.54 Local regulations; general. (1) REVIEW OF LOCAL REGULATIONS.** The department may review and comment on local regulations.

**Note:** "Local regulations" are defined in s. ATCP 50.01(18). Local conservation requirements should be consistent with this chapter (see ss. 92.05(1), (3)(c) and (3)(L), 92.07(2), 92.105(1), 92.11, 92.15(2) to (4), 92.16, 92.17 and 281.16(3), Stats.). The department may review and comment on local regulations, as it deems necessary. See specific requirements related to manure storage ordinances (ATCP 50.56), agricultural shoreland management ordinances (ATCP 50.58) and livestock ordinances (ATCP 50.60).

(2) **COST-SHARING REQUIRED.** (a) No county, local government or tribe receiving funds under this chapter may do any of the following, under this chapter or a local regulation, unless that county, local government or tribe first offers cost-sharing that is at least equal to the cost-sharing required under s. ATCP 50.08:

1. Require a conservation practice that discontinues or modifies cropping practices on existing cropland. In this paragraph, "existing cropland" has the meaning given in NR 151.09(4) (b).

2. Require a conservation practice that discontinues or modifies an existing livestock facility or operation. In this paragraph,

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“existing livestock facility or operation” has the meaning given in NR 151.095(5)(b).

(b) Paragraph (a) does not apply to a nutrient management plan required under a permit for a manure storage system voluntarily constructed by a landowner.

(c) Paragraph (a) does not limit any of the following:

1. Emergency or interim action taken in response to a pollution discharge, to prevent or mitigate imminent harm to waters of the state.

2. County action under s. ATCP 50.16 (6) to suspend a landowner's eligibility for farmland preservation tax credits, if the landowner fails to comply with conservation standards under s. ATCP 50.16 (1).

3. Enforcement of an existing cost-share contract.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.56 Manure storage systems; ordinance.**

(1) **GENERAL.** A county, city, village or town may adopt an ordinance under s. 92.16, Stats., that establishes standards for manure storage systems.

(2) **CONTENTS.** An ordinance adopted under s. 92.16, Stats., shall include all of the following:

(a) The authority of the county, city, village or town to adopt the ordinance.

(b) The purpose for the ordinance, and the findings that prompted the county, city, village or town to adopt the ordinance.

(c) Definitions of significant terms used in the ordinance.

**Note:** Section ATCP 50.62(1) includes relevant definitions that may be used in a manure storage ordinance.

(d) Construction provisions under sub. (3).

(e) Abandonment provisions under sub. (4), if any.

(f) Conditions, if any, under which the county, city, village or town may require the abandonment of a manure storage system.

(g) Provisions, if any, for monitoring the adequacy of manure storage systems, including the adequacy of related nutrient management practices.

**Note:** The monitoring system may be applied to all manure storage systems, regardless of when those systems were installed.

(h) Provisions related to ordinance administration, including inspection and enforcement authority, appeal procedures, and penalties for violating the ordinance.

(i) Provisions, if any, related to the initial applicability and severability of the ordinance.

(j) The effective date of the ordinance.

(3) **CONSTRUCTION PROVISIONS.** An ordinance adopted under s. 92.16, Stats., shall prohibit any person from constructing a manure storage system unless that person does all of the following:

(a) Obtains a permit from the county, city, village or town that adopts the ordinance.

(b) Develops a nutrient management plan that complies with s. ATCP 50.04 (3).

**Note:** A nutrient management plan, demonstrating that manure can be properly utilized, should be included with a permit application under par. (a). If the county, city, village or town wants to monitor compliance with the nutrient management plan, its ordinance may include monitoring provisions under sub. (2)(g).

(c) Complies with all of the following standards:

1. NRCS technical guide waste storage facility standard 313 (June, 2001).

2. NRCS technical guide manure transfer standard 634 (January, 2002).

3. Applicable DNR requirements under s. 281.65 (4) (g) 5., Stats.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(4) **ABANDONMENT PROVISIONS.** An ordinance adopted under s. 92.16, Stats., may prohibit any person from abandoning a

manure storage system unless that person does all of the following:

(a) Submits an abandonment plan for approval by the county, city, village or town. The abandonment plan shall comply with the waste facility closure provisions contained in the NRCS technical guide, closure of waste impoundments standard 360 (June 2001).

(b) Obtains a permit for the abandonment.

(c) Complies with the approved abandonment plan under par. (a).

**Note:** An ordinance may apply the abandonment requirements under sub. (4) to any manure storage system, regardless of when that system was installed.

For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(5) **COUNTY REVIEW.** Before a county, city, village or town adopts or amends a manure storage ordinance under s. 92.16, Stats., the county, city, village or town shall refer the proposed ordinance or amendment to the county land conservation committee and the county planning and zoning agency for review and comment.

(6) **DEPARTMENT REVIEW.** Before a county, city, village or town adopts or amends an ordinance under s. 92.16, Stats., the county, city, village or town shall submit the ordinance to the department. The department shall review the ordinance for consistency with this chapter. The department may ask the county, city, village or town for information that it needs to perform the review.

**Note:** See s. 92.05(3)(L), Stats.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.58 Shoreland management; ordinance.**

(1) **GENERAL.** A county, city, village or town may adopt or amend a shoreland management ordinance under s. 92.17, Stats., with department approval.

**Note:** This subsection does not limit the authority of a county, city, village or town to adopt a shoreland management ordinance under other applicable law.

(2) **CONTENTS.** An ordinance adopted under s. 92.17, Stats., shall include all of the following provisions:

(a) The authority of the county, city, village or town to adopt the ordinance.

(b) The purpose for the ordinance, and the findings that prompted the county, city, village or town to adopt the ordinance.

(c) Definitions of significant terms used in the ordinance.

(d) A description of the activities and geographical areas regulated under the ordinance, including maps of the areas at a scale of 1:24,000 (one inch per 2,000 feet) or larger.

(e) Soil and water resource management practices or compliance standards required under the ordinance.

(f) Procedures for developing and approving conservation plans, if required under the ordinance.

(g) Provisions related to ordinance administration, including inspection and enforcement authority, appeal procedures, and penalties for violating the ordinance.

(h) Provisions, if any, related to the initial applicability and severability of the ordinance.

(i) The effective date of the ordinance.

(3) **COUNTY REVIEW.** Before a county, city, village or town adopts or amends a shoreland management ordinance under 92.17, Stats., the county, city, village or town shall refer the proposed ordinance or amendment to the county land conservation committee and the county planning and zoning agency for review and comment.

(4) **DEPARTMENT APPROVAL.** (a) A county, city, village or town may submit a proposed ordinance or amendment for department approval under sub. (1). Except as provided in par. (c), the county, city, village or town shall submit all of the following with the proposed ordinance or amendment:

1. County comments under sub. (3), if any.

2. A description of any public hearings held on the proposal, and a brief summary of hearing comments if any.

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3. A statement, by an attorney authorized to practice law in this state, saying that the attorney has reviewed the ordinance or amendment for compliance with applicable law under chs. 59 to 68, Stats.

(b) Except as provided in par. (c), the department shall consult with DNR and the LWCBC before approving a proposed ordinance or amendment under sub. (1). The department may approve a proposed ordinance or amendment subject to conditions specified by the department. If the department disapproves a proposed ordinance or amendment, it shall give written notice specifying its reasons.

**Note:** DNR reviews shoreland management ordinances and amendments to determine whether they conflict with shoreland and shoreland-wetland zoning rules administered by the DNR under chs. NR 115 and 117.

(c) The department may approve a proposed ordinance amendment without consulting DNR or the LWCBC, and without reviewing any information under par. (a), if the department finds that the amendment involves no significant legal or policy issues.

(d) The department may approve a shoreland management ordinance or amendment proposed under s. 92.17, Stats., if the department finds that the ordinance or amendment is consistent with this chapter and conforms to guidelines adopted by the department under s. 92.17, Stats.

(e) Whenever a county, city, village or town adopts a shoreland management ordinance under s. 92.17, Stats., the county, city, village or town shall file a certified copy of the adopted ordinance with the department.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.60 Livestock operations; local regulation.**

**(1) LOCAL REGULATIONS THAT EXCEED STATE STANDARDS; APPROVAL REQUIRED.** (a) Except as provided in par. (b), no local regulation may require nutrient management or other conservation practices for livestock operations that exceed the practices required under s. ATP 50.04 unless the department or DNR approves those requirements under this section or NR 151.096.

**Note:** See s. 92.15, Stats. A person adversely affected by a local livestock regulation may oppose its adoption at the local level. The person may also challenge a local regulation in court if the person believes that the local governmental unit has violated par. (a) or s. 92.15, Stats. A local governmental unit is responsible for analyzing the legal adequacy of its regulations, and may exercise its own legal judgment in deciding whether to seek state approval under this section.

A local permit requirement does not, *by itself*, violate par. (a). But permit conditions codified in a local regulation must comply with par. (a). If a local governmental unit routinely requires permit holders to comply with *uncodified* conservation requirements that exceed state standards, those uncodified requirements may be subject to court challenge under s. 92.15, Stats., and par. (a) as *de facto* regulatory enactments. A local governmental unit may forestall a legal challenge by codifying standard permit conditions and obtaining any necessary state approval under this section. The department will review codified regulations under sub. (2), but will not review individual permits or uncodified permit conditions.

(b) Paragraph (a) does not apply to any of the following:

1. Local regulation of cropping practices that are not directly related to a livestock operation.

2. Local regulations enacted prior to October 1, 2002. This does not limit the application of s. 92.15, Stats., to those local regulations.

**(2) DEPARTMENT APPROVAL.** (a) To obtain department approval under sub. (1) (a) for an existing or proposed regulation, the head of the local governmental unit or the chair of the local governmental unit's governing board shall do all the following:

1. Submit a copy of the regulation to the department and DNR.

2. Identify the provisions of the regulation for which the local governmental unit seeks approval.

3. Submit documentation showing why the identified provisions are needed to achieve compliance with water quality standards, and why compliance cannot be achieved by less stringent provisions.

(b) Within 90 days after the department receives a complete application under par. (a), the department shall grant or deny the requested approval. Before the department grants or denies the

application, the department shall solicit a recommendation from DNR. The department shall issue its decision in writing, and shall state the reasons for its decision.

**Note:** The department may identify other concerns related to a proposed ordinance, but will not formally approve or disapprove any ordinance provisions other than those identified by the local governmental unit under par. (a)2. The department does not assume responsibility for the affirmative review and approval of every provision of every local regulation.

(c) The department may approve a provision identified under par. (a) 2. if the department finds that the provision is necessary to achieve compliance with water quality standards under s. 281.15, Stats., and that compliance cannot reasonably be achieved by less restrictive means.

(d) The department may not review or approve individual permits or permit conditions under this subsection, except that the department may review standard permit conditions that are codified in a local regulation. The department may approve those codified conditions if they meet the standard for approval under par. (c).

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**Subchapter VIII — Standards for Cost-Shared Practices**

**ATCP 50.61 General standards for cost-shared practices.** **(1) COST-SHARED PRACTICES MUST COMPLY.** Cost-shared practices under this chapter shall comply with applicable standards under this subchapter.

**(2) STANDARDS ADOPTED BY RULE.** The department may not adopt, amend or repeal standards under this subchapter, except by rule.

**Note:** Before the department adopts, amends or repeals a standard by rule, the department will consider the recommendations of the standards oversight council, a voluntary multi-agency council that works to share technical information and coordinate technical standards among participating agencies. Before the department adopts, amends or repeals a standard by rule, the department must normally do all of the following (see s. 15.13, Stats., and ch. 227, Stats.):

**ATCP 50.62 Manure storage systems.** **(1) DEFINITIONS.** In this section:

(a) "Animal feeding operation" means a feedlot or facility, other than a pasture, where animals are fed, confined, maintained or stabled for 45 days or more in any 12-month period. Two or more animal feeding operations under common ownership or management constitute a single animal feeding operation if any of the following apply:

1. The operations are adjacent.
2. The operations use common plans, acreage or systems to landspread manure or other wastes.
3. Manure, barnyard runoff or other wastes are commingled in a common storage facility prior to landspreading.

(b) "Manure management system" means a system of one or more practices, facilities, techniques or measures used to prevent or reduce pollutants associated with manure. A "manure management system" may include one or more of the following:

1. A manure storage system.
2. A barnyard runoff control system as defined in s. ATP 50.64 (1).
3. Nutrient management as defined in s. ATP 50.78 (1).
4. Manure storage system closure as defined in s. ATP 50.63 (1) (b).
5. Well abandonment as described in ch. NR 812.

(c) "Manure storage facility" means one or more manure storage structures. "Manure storage facility" includes stationary equipment and piping used to load or unload a manure storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. "Manure storage facility" does not include equipment used to apply manure to land.

(d) "Manure storage structure" means a manure storage impoundment made by constructing embankments, excavating a



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pit or dugout, or fabricating a structure. "Manure storage structure" does not include equipment used to apply manure to land.

(e) "Manure storage system" means a manure storage facility and related practices needed for the environmentally safe storage of manure at that facility. A "manure storage system" does not include any of the following:

1. A milking center waste control system.
2. Nutrient management as defined in s. ATCP 50.78 (1).
3. A barnyard runoff control system as defined in s. ATCP 50.64 (1).
4. Equipment used to apply manure to land.

**(2) MANURE STORAGE SYSTEMS; ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to a manure storage system:

- (a) Costs to design or construct the system.
- (b) Costs to purchase and install permanent fencing needed to protect the system.
- (c) Abandonment of the system if abandonment is required to meet water quality objectives.
- (d) Costs to repair, reconstruct or modify the system, or to abandon a related well, if all of the following apply:
  1. The action is needed to meet water quality objectives.
  2. The remaining portions of the system are fully operational.
  3. The landowner has made a substantial investment in the system, and will lose that investment if the system is not repaired or modified.

**(3) MANURE STORAGE SYSTEMS; INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any of the following costs:

- (a) Costs to design a manure storage system that is not installed.
- (b) Costs to construct, modify or support a building. This paragraph does not apply to a modification that is essential for the installation of a manure storage system, or to the construction of a roof pursuant to s. ATCP 50.84.
- (c) Costs for equipment used to apply manure to land, including manure spreaders, portable pumps and other nonstationary equipment.
- (d) Any manure storage system costs related to an animal feeding operation if all of the manure from that operation could be applied to land according to the NRCS technical guide nutrient management standard 590 dated March, 1999, without causing or aggravating nonattainment of water quality standards.

**Note:** The NRCS technical guide nutrient management standard 590 (March, 1999) is reproduced in Appendix D. The feasibility of applying manure to land under par. (d) will be determined in light of existing topographic, climatological and management factors.

- (e) Costs of removing or spreading manure from the system.
- (f) Costs for more than one manure storage system for an animal feeding operation.
- (g) Costs for a manure storage system, to the extent that those costs exceed the cost of an equally effective alternative.
- (h) That portion of the system capacity needed to accommodate a significant increase in the base livestock population size. If the landowner chooses a system with additional capacity, the cost-share grant will be prorated based on the eligible capacity. The following criteria shall be used in making the determinations under this paragraph, as applicable:

1. The criteria used in s. NR 151.095 (5) (d) 2. d. to determine the size of the base livestock population.
2. The criteria used in s. NR 151.095 (5) (d) 2. d. to determine significant increases to the base livestock population.
3. The calculation used in s. NR 243.11 (2) to measure animal units.

(i) A system capacity needed for a livestock population size for which a WPDES permit application is required under s. NR 243.12 (1) (a) or (b). The size of the livestock population shall be measured in animal units according to s. NR 243.11 (2).

**(4) MANURE STORAGE SYSTEMS; GRANT DISQUALIFICATION.** A county land conservation committee may not award a cost-share grant for a manure storage system if any of the following apply:

- (a) The landowner intentionally aggravated a pollution discharge from the animal feeding operation.
- (b) The landowner could prevent the discharge of pollutants through improved management practices at nominal cost.
- (c) The manure storage system will not achieve compliance with applicable state and local regulations.
- (d) The landowner holds, or is required to apply for, a Wisconsin pollution discharge elimination system permit for the animal feeding operation under s. 283.31, Stats.
- (e) The landowner could have prevented the discharge of pollutants by complying with an operations and maintenance plan previously agreed upon by the landowner and one of the following:

1. The department.
2. The county land conservation committee.
3. DNR.
4. NRCS.

**(5) MANURE STORAGE SYSTEMS; DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs related to a manure storage system unless all of the following conditions are met:

- (a) The system capacity is necessary to store the manure produced by the animal feeding operation over a normal period of 30 to 365 days, as verified by a nutrient management plan or an operation and maintenance plan.
- (b) The system complies with well location requirements under s. NR 812.08.
- (c) If the manure storage facility is designed to be emptied annually or semi-annually, manure from the system is incorporated into the soil within 3 days after it is applied to land.
- (d) No manure from the system is applied to frozen or saturated ground.
- (e) The system complies with all of the following that apply:
  1. NRCS technical guide waste storage facility standard 313 (June, 2001).
  2. NRCS technical guide manure transfer standard 634 (January, 2002).
  3. NRCS technical guide well decommissioning standard 351 (April, 1999).
  4. NRCS technical guide fencing standard 382 (November, 1999).
  5. NRCS technical guide heavy use area protection standard 561 (March, 2002).
  6. Other standards specified by the department.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(f) The landowner establishes a nutrient management plan, and agrees to comply with that plan and maintain the manure storage system for 10 years unless the animal feeding operation is discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

## **ATCP 50.63 Manure storage system closure.**

**(1) DEFINITIONS.** In this section:

- (a) "Manure storage system" has the meaning given in s. ATCP 50.62 (1) (e).

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(b) “Manure storage system closure” means permanently disabling and sealing a leaking or improperly sited manure storage system.

**(2) COST-SHARE ELIGIBILITY.** A cost-share grant under s. ATCP 50.40 may reimburse costs to close a manure storage system if any of the following conditions exist:

- (a) Groundwater enters the manure storage system.
- (b) The manure storage system is in contact with or intercepts bedrock.
- (c) Manure has been discharged into surface or groundwater as a result of an irreparable structural failure in the manure storage system.
- (d) The county land conservation committee finds that continued use of the manure storage system is likely to result in resource degradation.

**(3) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to the closure of a manure storage system:

- (a) Costs to design and remove any constructed soil liner, concrete liner or membrane liner.
- (b) Costs to remove and dispose of soil saturated with manure.
- (c) Costs for filling, shaping and seeding the site to provide surface drainage away from the closed site.
- (d) Costs to remove a manure transfer system, if any.

**(4) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse the costs of removing or spreading manure that can be removed using conventional equipment and routine agricultural practices.

**(5) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs related to the closure of a manure storage system unless the closure plan complies with NRCS closure of waste impoundments standard 360 (June 2001).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.64 Barnyard runoff control systems.**

**(1) DEFINITION.** In this section, “barnyard runoff control system” means a system of facilities or practices used to contain, divert, retard, treat or otherwise control the discharge of runoff from outdoor areas of concentrated livestock activity. A “barnyard runoff control system” may include any of the following components which is necessary to contain, divert, retard, treat or control surface water runoff:

- (a) Access roads or cattle crossings under s. ATCP 50.65.
- (b) Animal trails and walkways under s. ATCP 50.66.
- (c) Critical area stabilization under s. ATCP 50.69.
- (d) Diversions under s. ATCP 50.70.
- (e) Heavy use area protection under s. ATCP 50.74.
- (f) Prescribed grazing under s. ATCP 50.80.
- (g) Waterway systems under s. ATCP 50.96.
- (h) Livestock fencing under s. ATCP 50.75.
- (i) Livestock watering facilities under s. ATCP 50.76.
- (j) Manure storage systems under s. ATCP 50.62 that are needed to collect and contain barnyard runoff.
- (k) Nutrient management under s. ATCP 50.78.
- (l) Relocating or abandoning animal feeding operations under s. ATCP 50.81.
- (m) Roofs under s. ATCP 50.84.
- (n) Roof runoff systems under s. ATCP 50.85.
- (o) Sediment basins under s. ATCP 50.86.
- (p) Streambank and shoreline protection under s. ATCP 50.88.
- (q) Subsurface drains under s. ATCP 50.90.
- (r) Underground outlets under s. ATCP 50.92.

(s) Waste transfer systems under s. ATCP 50.93.

(t) Waste water treatment strip under s. ATCP 50.94.

(u) Water and sediment control basins under s. ATCP 50.95.

(v) Well decommissioning under s. ATCP 50.97.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to a barnyard runoff control system:

(a) Costs for system components under sub. (1) that are eligible for reimbursement under this subchapter.

(b) Costs to establish permanent vegetative cover, or to provide temporary cover pending the establishment of permanent cover. This may include costs for mulch, fertilizer, seed and other necessary materials.

(c) Costs for modification of a building that is essential for installation of the barnyard runoff control system, or for construction of a roof pursuant to s. ATCP 50.84.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any of the following costs:

(a) Costs to design a barnyard runoff control system that is not installed.

(b) Costs to construct a building.

(c) Costs for equipment used to apply manure to land.

(d) Costs of a proposed practice, to the extent that those costs exceed the cost of an equally effective alternative.

(e) Costs ineligible under s. ATCP 50.62 (3) (g) or (h).

**(4) BARNYARD RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION.** A county land conservation committee may not award a cost-share grant for a barnyard runoff control system if any of the following apply:

(a) The landowner intentionally aggravated a pollution discharge from the animal feeding operation.

(b) The landowner could prevent the discharge of pollutants through improved management practices at nominal cost.

(c) The barnyard runoff control system will not be adequate to achieve compliance with applicable state and local regulations.

(d) The landowner holds, or is required to apply for, a Wisconsin pollution discharge elimination system permit for the animal feeding operation under s. 283.31, Stats.

(e) The landowner could have prevented the discharge of pollutants by complying with an operations and maintenance plan previously agreed upon by the landowner and one of the following:

- 1. The department.
- 2. The county land conservation committee.
- 3. DNR.
- 4. NRCS.

**(5) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse any costs for a barnyard runoff control system unless all of the following conditions are met:

(a) The system complies with applicable design, construction and maintenance standards under this subchapter.

(b) The landowner agrees to maintain the barnyard runoff control system, and the nutrient management plan if required, for 10 years unless the animal feeding operation is discontinued.

**Note:** A barnyard runoff control system may include one or more of the practices listed in this section. Standards for the listed practices are contained in other sections of this subchapter. Any of the listed practices may also be cost-shared in a project which is not a barnyard runoff control project.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.65 Access roads and cattle crossings.**

**(1) DEFINITION.** In this section, “access road or cattle crossing” means a road or pathway which confines or directs the movement of livestock or farm equipment, and which is designed and installed to control surface water runoff, to protect an installed practice, to control livestock access to a stream or waterway, to stabilize a stream crossing, or to prevent erosion.

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**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of establishing an access road or cattle crossing if the access road or cattle crossing is needed to comply with applicable state or local regulations.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing an access road or cattle crossing unless all of the following conditions are met:

(a) The access road or cattle crossing complies with all of the following that apply:

1. NRCS technical guide access road standard 560 (March, 1989).
2. NRCS technical guide streambank and shoreline protection standard 580 (February, 1997).
3. NRCS technical guide fencing standard 382 (November, 1999).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the access road or cattle crossing for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.66 Animal trails and walkways. (1) DEFINITION.** In this section, "animal trail or walkway" means a travel lane to facilitate movement of livestock.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of establishing an animal trail or walkway when necessary to comply with state or local regulations.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing an animal trail or walkway unless all of the following conditions are met:

(a) The animal trail or walkway complies with all of the following that apply:

1. NRCS technical guide animal trails and walkways standard 575 (April, 2002).
2. NRCS technical guide streambank and shoreline protection standard 580 (February, 1997).
3. NRCS technical guide fencing standard 382 (November, 1999).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the animal trail or walkway for 10 years unless farming operations on the affected land are discontinued.

**ATCP 50.67 Contour farming. (1) DEFINITION.** In this section, "contour farming" means plowing, preparing, planting and cultivating sloping land on the contour and along established grades of terraces or diversions.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse costs to establish a contour farming system, including necessary costs to remove obstacles.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse contour farming costs unless the contour farming system meets the following applicable standards:

- (a) NRCS technical guide contour farming standard 330 (May, 2002).
- (b) NRCS technical guide obstruction removal standard 500 (May, 2002).
- (c) NRCS technical guide standard wildlife upland habitat management standard 645 (July, 2000), if habitat management is used to mitigate the loss of habitat resulting from the installation of contour farming.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.68 Cover and green manure crop. (1) DEFINITION.** In this section, "cropland cover" means close-growing grasses, legumes or small grain grown for any of the following purposes:

(a) To control erosion during periods when major crops do not furnish adequate cover.

(b) To add organic matter to the soil.

(c) To improve soil infiltration, aeration or tilth.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse costs to establish cropland cover on a field that contributes to water quality degradation when crop harvesting during the growing season leaves the field without enough residue to provide adequate surface runoff protection.

**(3) INELIGIBLE COSTS.** A county land conservation committee may not, without prior department approval, provide cost-share grants under this section and s. ATCP 50.82 for the same acreage for the same year.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs to establish cropland cover unless all of the following apply:

(a) The cropland cover meets NRCS technical guide cover and green manure crop standard 340 (May 1986).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the cover and green manure crop in each cropping season for which cost-sharing is provided.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.69 Critical area stabilization. (1) DEFINITION.** In this section, "critical area stabilization" means planting suitable vegetation on erodible areas such as steep slopes, gullies and roadsides, so as to reduce soil erosion or pollution from agricultural nonpoint sources. "Critical area stabilization" may also include treating areas that drain into bedrock crevices, openings or sinkholes.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the following critical area stabilization costs:

(a) Costs to purchase and install permanent fencing around the critical area.

(b) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(c) Preparatory shaping and smoothing operations.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse for the costs of planting trees intended for commercial harvest.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse critical area stabilization costs unless all of the following conditions are met:

(a) The critical area stabilization complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).
2. NRCS technical guide fencing standard 382 (November, 1999).
3. NRCS technical guide field border standard 386 (May, 2002).
4. NRCS technical guide livestock exclusion standard 472 (June, 1983).
5. NRCS technical guide mulching standard 484 (July, 1987).



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6. NRCS technical guide tree and shrub establishment standard 612 (March, 2001).

7. NRCS technical guide sinkhole treatment standard 725 (March, 2000).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the critical area stabilization practice for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.70 Diversions. (1) DEFINITION.** In this section, “diversion” means a structure installed to divert excess surface runoff water to an area where it can be used, transported or discharged without causing excessive soil erosion. “Diversion” includes a channel with a supporting earthen ridge on the lower side, installed across the slope with a self-discharging and non-erosive gradient.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs to establish a diversion system:

(a) Costs to install a diversion, outlet, dike or subsurface drain. Costs to install a subsurface drain may be reimbursed only if the drain is installed on sloping land where groundwater seeps to the surface and causes the land or land cover to lose its stability.

(b) Costs to install pipes, underground outlets, or other structures needed to deliver water to a ditch or dike, to promote a more even flow of water, or to protect outlets from erosion.

(c) Costs for leveling and filling needed to install an effective diversion system.

(d) Costs to remove obstructions, if necessary for the installation of an effective diversion system.

(e) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(f) Fencing needed to protect a diversion from livestock.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not be used to install ditches or dikes that are designed to drain or impound water for later use, or that will be a part of a regular irrigation system.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs to establish a diversion system unless all of the following conditions are met:

(a) The diversion includes an adequate outlet that prevents erosion.

(b) The diversion complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide diversion standard 362 (May, 2002).

3. NRCS technical guide fencing standard 382 (November, 1999).

4. NRCS technical guide grassed waterway standard 412 (April, 2002).

5. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).

6. NRCS technical guide obstruction removal standard 500 (May, 2002).

7. NRCS technical guide subsurface drain standard 606 (September, 1989).

8. NRCS technical guide underground outlet standard 620 (May, 2002).

9. NRCS technical guide wildlife upland habitat management standard 645 (July, 2000), if habitat management is used to mitigate the loss of habitat resulting from installation of a diversion.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the diversion for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.71 Field windbreaks. (1) DEFINITION.** In this section, “field windbreak” means a strip or belt of trees, shrubs or grasses established or restored within or adjacent to a field, so as to control soil erosion by reducing wind velocities at the land surface.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of planting trees, shrubs or grasses to protect farm fields from wind erosion.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse field windbreak costs unless all of the following conditions are met:

(a) The windbreak is protected from destructive grazing.

(b) The windbreak complies with all of the following that apply:

1. NRCS technical guide fencing standard 382 (November, 1999).

2. NRCS technical guide field windbreaks standard 392 (May, 1990).

3. NRCS technical guide livestock exclusion standard 472 (June, 1983).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the windbreak for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.72 Filter strips. (1) DEFINITION.** In this section:

(a) “Filter strip” means an area of herbaceous vegetation that separates an environmentally sensitive area from cropland, grazing land or disturbed land. “Filter strip” does not include a wastewater treatment strip.

(b) “Wastewater treatment strip” has the meaning given in s. ATCP 50.94 (1).

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the following filter strip costs:

(a) Permanent fencing to protect the filter strip.

(b) Costs to establish permanent vegetative cover in the filter strip, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(c) Costs to shape, smooth or prepare the filter strip before establishing a permanent vegetative cover.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS.** A cost-share grant under s. ATCP 50.40 may not reimburse filter strip costs unless all of the following conditions are met:

(a) The filter strip complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide fencing standard 382 (November, 1999).

3. NRCS technical guide field border standard 386 (May, 2002).

4. NRCS technical guide filter strip standard 393 (January, 2001).

5. NRCS technical guide livestock exclusion standard 472 (June, 1983).

6. NRCS technical guide mulching standard 484 (July, 1987).

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7. NRCS technical guide riparian forest buffer standard 391 (January, 2001).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the filter strip for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.73 Grade stabilization structures. (1) DEFINITION.** In this section, "grade stabilization structure" means a structure which stabilizes the grade in a channel in order to protect the channel from erosion, or to prevent gullies from forming or advancing. A "grade stabilization structure" may include any of the following:

(a) Detention or retention structures such as dams, desilting reservoirs, sediment basins and debris basins.

(b) Related structures such as channel linings, chutes, drop spillways or pipe drops.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following:

(a) Costs to design, construct, repair or modify a grade stabilization structure.

(b) Costs for leveling and filling needed to install the structure.

(c) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer, seed and other necessary materials.

(d) Costs for fencing to protect the structure.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any cost related to a grade stabilization structure unless all of the following conditions are met:

(a) The department pre-approves the structure in writing if the embankment structural height is 15 to 25 feet, or the maximum storage capacity is 15 to 50 acre-feet.

(b) The structural height does not exceed 25 feet, and the maximum storage capacity does not exceed 50 acre-feet.

(c) DNR is notified and given the opportunity to conduct a feasibility study if the structure is adjacent to a navigable stream or a stream supporting a fishery.

(d) The structure complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide sediment basin standard 350 (September, 1990).

3. NRCS technical guide diversion standard 362 (May, 2002).

4. NRCS technical guide fencing standard 382 (November, 1999).

5. NRCS technical guide obstruction removal standard 500 (May, 2002).

6. NRCS technical guide grade stabilization structure standard 410 (July, 2001).

7. NRCS technical guide grassed waterway standard 412 (April, 2002).

8. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).

9. NRCS technical guide mulching standard 484 (July, 1987).

10. NRCS technical guide subsurface drain standard 606 (September, 1989).

11. NRCS technical guide underground outlet standard 620 (May, 2002).

12. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(e) The landowner agrees to maintain the grade stabilization structure for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.74 Heavy use area protection. (1) DEFINITION.** In this section, "heavy use area protection" means installation of surface material to control runoff and erosion in areas subject to concentrated or frequent livestock activity. "Heavy use area protection" may include establishing vegetative cover, or installing surfacing materials such as concrete, compacted stone and stone fragments, or geotextiles.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to heavy use area protection:

(a) Costs for surfacing materials in a barnyard runoff control system, manure storage system or prescribed grazing system if necessary to facilitate removal of manure or to protect groundwater.

(b) Costs for installing a permanent vegetative cover, including costs for mulch, fertilizer, seed and other necessary materials.

(c) Costs for excavation, fill, grading and compacting.

(d) Costs for fencing needed to contain livestock in any barnyard runoff control system.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of heavy use area protection unless all of the following conditions are met:

(a) The practice complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide fencing standard 382 (November, 1999).

3. NRCS technical guide heavy use area protection standard 561 (March, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the heavy use area protection for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.75 Livestock fencing. (1) DEFINITION.** In this section, "livestock fencing" means either of the following:

(a) Excluding livestock, by fencing or other means, in order to protect an erodible area or a practice under this subchapter.

(b) Restricting, by fencing or other means, human access to manure storage structures or other practices under this subchapter which may pose a hazard to humans.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse costs for livestock fencing, including the cost of designing and installing permanent fencing, gates and related devices that are necessary to protect a practice, or to prevent degradation of waters of the state.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse the costs for any of the following:

(a) Electric fence energizers.

(b) Portable fences and equipment used to contain or exclude livestock.

(c) Fencing, gates or other equipment used primarily for the purpose of segregating, handling or feeding livestock, rather than protecting an erodible area or a practice under this subchapter.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse livestock fencing costs unless all of the following conditions are met:

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(a) The livestock fencing complies with all of the following that apply:

1. NRCS technical guide fencing standard 382 (November, 1999).

2. NRCS technical guide livestock exclusion standard 472 (June, 1983).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the livestock fencing practice for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.76 Livestock watering facilities. (1) DEFINITION.** In this section, "livestock watering facility" means a trough, tank, pipe, conduit, spring development, pump, well, or other device or combination of devices installed to deliver drinking water to livestock.

**(2) COST-SHARE ELIGIBILITY.** A cost-share grant under s. ATCP 50.40 may reimburse costs to establish a livestock watering facility if the livestock watering facility is a necessary component of a prescribed grazing system funded under s. ATCP 50.80, or if all of the following conditions are met:

(a) The livestock watering facility will do one of the following:

1. Prevent nonpoint source water pollution by replacing livestock access to a stream or other natural drinking water source.

2. Water livestock that are isolated from a natural drinking water source by another conservation practice under this subchapter.

(b) The livestock watering facility is necessary to achieve water quality objectives.

(c) Installing the livestock watering facility is less expensive than providing environmentally safe livestock access to a natural source of drinking water.

**(3) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a livestock watering facility.

**(4) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse costs for any of the following:

(a) More than one livestock watering facility when the need for more than one watering facility is created by the segregation or handling of livestock within a manure management system. This paragraph does not apply when the need for more than one livestock watering facility is created by the segregation or handling of livestock within a prescribed grazing system.

(b) A water supply used for purposes other than providing drinking water to livestock.

(c) Installing a livestock watering facility if there is a less expensive way to water livestock, consistent with soil and water conservation goals.

**(5) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse the cost of establishing a livestock watering facility unless all of the following conditions are met:

(a) The livestock watering facility complies with all of the following that apply:

1. NRCS technical guide spring development standard 574 (May, 1987).

2. NRCS technical guide watering facility standard 614 (April, 2002).

3. NRCS technical guide well standard 642 (April, 1999).

4. NRCS technical guide pipeline standard 516 (April, 2002).

5. Chapter NR 812, related to well construction and pump installation.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the livestock watering facility for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.77 Milking center waste control systems.**

**(1) DEFINITIONS.** In this section:

(a) "Milking center waste" means waste water, cleaning ingredients, waste milk or other discharge from a milking parlor or milkhous.

(b) "Milking center waste control system" means a system of facilities or equipment designed to contain or control the discharge of milking center waste.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to a milking center waste control system:

(a) Costs to design, construct, repair or modify a milking center waste control system, including costs for appropriate waste pretreatment, waste storage and land irrigation equipment.

(b) Costs for conduits, pumps and related equipment required to transfer milking center wastes, provided that the equipment is designed and used for that sole purpose.

(c) Other milking center waste control measures, approved by the department, that are needed to meet identified water quality objectives. These measures may include conservation sinks, pre-cooler water utilization systems, manifold cleaning systems, air injection systems, wastewater treatment strips used with appropriate waste pretreatment measures, recyclable water storage and plumbing for automatic water and cleaning chemicals controls, flocculator systems, waste milk diverter valves and booster pumps for parlor floor cleaning.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any of the following costs related to a milking center waste control system:

(a) Costs for any system, component or practice that is not needed to correct an identified water pollution hazard.

(b) Buildings or modifications to buildings. This paragraph does not apply to building modifications that are essential for the installation of a milking center waste control system.

(c) Portable equipment for spreading milking center wastes onto land or incorporating those wastes into land.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse any costs related to a milking center waste control system unless all of the following conditions are met:

(a) The system complies with all of the following that apply:

1. The university of Wisconsin—extension pollution control guide for milking center waste water management (July 1994).

**Note:** The UW—extension pollution control guide for milking center waste water management is on file with the department, the secretary of state and the revisor of statutes. Copies may be purchased from the department or the university of Wisconsin—extension (UWEX Pub. No. A3592). For further information, see Appendix G.

2. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

3. NRCS technical guide waste storage facility standard 313 (June, 2001).

4. NRCS technical guide manure transfer standard 634 (January, 2002).

5. NRCS technical guide nutrient management standard 590 (March, 1999).

**Note:** The NRCS technical guide nutrient management standard 590 (March, 1999) is reproduced in Appendix D. For information on how to obtain other NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the milking center waste control system for 10 years unless the milking operation is discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.



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**ATCP 50.78 Nutrient management. (1) DEFINITIONS.** In this section, “nutrient management” means controlling the amount, source, form, location and timing of plant nutrient applications, including application of organic wastes, commercial fertilizers, soil reserves and legumes, in order to provide plant nutrients while minimizing the movement of nutrients to surface water and groundwater.

**(2) ELIGIBLE COSTS.** A cost–share grant under s. ATCP 50.40 may reimburse costs for nutrient management prescribed in a nutrient management plan. A cost–share grant may reimburse any of the following costs related to nutrient management:

- (a) Costs for soil and plant nutrient testing, including residual nitrogen analysis.
- (b) Costs for nutrient analysis of manure and other organic waste.
- (c) Costs to develop or revise a nutrient management plan.

**(3) DESIGN AND MAINTENANCE.** A cost–share grant under s. ATCP 50.40 may not reimburse nutrient management costs under this section unless all of the following conditions are met:

- (a) The nutrient management practice complies with NRCS technical guide nutrient management standard 590 dated March, 1999.

**Note:** The NRCS technical guide nutrient management standard 590 (March, 1999) is reproduced in Appendix D.

- (b) The landowner agrees to maintain the nutrient management practice in each year for which cost–sharing is provided.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.79 Pesticide management. (1) DEFINITION.** In this section, “pesticide management” means controlling the storage, handling, use and disposal of pesticides used in crop production in order to minimize contamination of water, air and non-target organisms.

**(2) ELIGIBLE COSTS.** A cost–share grant under s. ATCP 50.40 may reimburse costs for pesticide management described in a pesticide management plan. A cost–share grant may reimburse any of the following costs related to pesticide management:

- (a) Costs for integrated pest management field scouting.
- (b) Costs to develop or revise a pesticide management plan.
- (c) Costs for spill control facilities, including any of the following facilities that are needed:

1. A liquid–tight, reinforced concrete pad for a pesticide mixing area.
2. Water–tight walls or perimeter flow diversion structures to convey spills or contaminated water from a pesticide mixing area to a sump.
3. Perimeter flow diversion structures needed to convey surface water away from a pesticide mixing area.
4. A shallow sump collection area capable of storing spills, rinsate, washwater and precipitation that may leak or fall on a pesticide mixing pad.
5. Roof structures and walls to protect a pesticide mixing area.
6. Pesticide mixing area approach ramps.
7. Water supply systems needed for a pesticide mixing area.
8. Sump pump alarm and recovery systems for a pesticide mixing area.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost–share grant under s. ATCP 50.40 may not reimburse pesticide management costs under this section unless all of the following conditions are met:

- (a) The cost–shared practice complies with all of the following that apply:

1. NRCS technical guide pest management standard 595 (January, 1991).
2. Pesticide mixing and loading standards under subch. VIII of ch. ATCP 29.

3. Standards specified by the midwest plan service in *Designing Facilities for Pesticide and Fertilizer Containment*, MWPS–37 (revised first edition, 1995).

**Note:** For information on how to obtain technical standards incorporated by reference in subd. 1. or 3., including any secondary standards incorporated by reference in those standards, see Appendix G.

- (b) The landowner agrees to maintain the pesticide management practice for each cropping season for which cost–sharing is provided.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.80 Prescribed grazing. (1) DEFINITION.** In this section, “prescribed grazing” or “rotational grazing” means a grazing system which divides pastures into multiple cells, each of which is grazed intensively for a short period and then protected from grazing until its vegetative cover is restored.

**Note:** Prescribed grazing systems can prevent degradation resulting from other pasturing practices. Prescribed grazing systems should replace summer dirt lots when they result in water quality degradation.

**(2) ELIGIBLE COSTS.** A cost–share grant under s. ATCP 50.40 may reimburse the cost of replacing animal lots or pastures, or establishing a prescribed grazing system on croplands, that contribute sediments, nutrients or pesticides to a water resource. This may include any of the following costs:

- (a) The cost to establish or repair livestock access lanes and stream crossings to prevent instability and erosion.
- (b) The cost to establish permanent boundary and main paddock fences. This may include perimeter fencing, lane fencing, portable fencing and gates.

- (c) The cost to establish good seeding stands for pasture and hayland planting.

- (d) The cost to establish a livestock watering facility. This may include pipeline and pasture watering systems, wells, spring developments, and portable watering systems such as pumps, pipes and tanks.

- (e) The costs for practices that would remediate streambank erosion and streambank habitat degradation.

- (f) The costs for practices that would exclude livestock from woodlands, sensitive wildlife habitat and recreational lands.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost–share grant under s. ATCP 50.40 may not reimburse prescribed grazing costs unless all of the following conditions are met:

- (a) The prescribed grazing practices comply with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).
2. NRCS technical guide pasture and hayland planting standard 512 (March, 1992).
3. NRCS technical guide livestock exclusion standard 472 (June, 1983).
4. NRCS technical guide streambank and shoreline protection standard 580 (February, 1997).
5. NRCS technical guide heavy use area protection standard 561 (March, 2002).
6. NRCS technical guide prescribed grazing standard 528A (April, 1998).
7. Guidelines specified in “pastures for profit: a guide to rotational grazing,” published by the university of Wisconsin–extension, August 1994.

**Note:** Copies of “pastures for profit: a guide to rotational grazing” are on file with the department, the secretary of state and the revisor of statutes. Copies may be purchased from the department or from the university of Wisconsin–extension (UWEX Pub. No. A3529). For further information, see Appendix G.

- 8. NRCS technical guide animal trails and walkways standard 575 (April, 2002).

- 9. Standards for livestock watering facilities specified under s. ATCP 50.76.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

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(b) The landowner agrees to maintain the prescribed grazing system for 10 years unless farming operations on the affected land are discontinued.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.81 Relocating or abandoning animal feeding operations. (1) DEFINITIONS.** In this section:

(a) “Abandonment” means discontinuing an animal feeding operation in order to prevent surface water or groundwater pollution from that animal feeding operation.

(b) “Animal feeding operation” means a feedlot or facility, other than a pasture, where animals are fed, confined, maintained or stabled for 45 days or more in any 12-month period. Two or more animal feeding operations under common ownership or common management constitute a single animal feeding operation if any of the following apply:

1. The operations are adjacent.
2. The operations use common plans, acreage or systems to landspread manure or other wastes.
3. Manure, barnyard runoff or other wastes are commingled in a common storage facility prior to landspreading.

(c) “Relocation” means discontinuing an animal feeding operation at one site and commencing that operation at a suitable alternate site in order to minimize the amount of surface water or groundwater pollution from that animal feeding operation.

**(2) COST-SHARE ELIGIBILITY.** A cost-share grant under s. ATCP 50.40 may reimburse costs incurred for the permanent relocation or abandonment of an animal feeding operation if all of the following conditions are met:

(a) The department or the county land conservation committee finds that relocation or abandonment is the most practical and cost-effective way to achieve compliance with state or local regulations.

(b) The department approves the relocation or abandonment plan.

(c) The landowner agrees, in a covenant that runs with the land, that no person may reestablish an animal feeding operation at that site unless the department determines that the reestablished operation complies with ATCP 50.04. The department may waive this requirement if the department finds that the covenant is unnecessary.

(d) The covenant under par. (c) is recorded in the office of the register of deeds for each county in which the property is located.

**(3) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs to relocate or abandon an animal feeding operation:

(a) Costs to install manure management systems and other conservation practices under this subchapter at a new site, as authorized under this chapter.

(b) Costs to abandon and rehabilitate the current site, including costs for any of the following:

1. Removing concrete paving, fencing, bunks, livestock housing structures, livestock feeding structures and other obstructions.
2. Grading and establishing vegetation on the site.
3. Excluding livestock from the site.
4. Abandoning wells on the site.

(c) Costs to move buildings and other structures.

(d) Costs to transport animals to a site in this state that is not on the same farm, up to a maximum of \$5,000.

(e) Costs for livestock buildings and associated facilities needed to maintain the transferred livestock at the new site if all of the following apply:

1. The department determines that the relocation is necessary to comply with ATCP 50.04 and is cost-effective.

2. The cost-share grant does not exceed the appraised value of the buildings and associated facilities at the current site, or 70% of the costs of the replacement buildings and associated facilities, whichever is less.

3. The relocation will not cause a violation of ATCP 50.04.

**Note:** Cost-share grants under this section are subject to the limitations specified in s. ATCP 50.42.

**(4) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs to reestablish an animal feeding operation that has been abandoned under this section.

**(5) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse the cost of relocating or abandoning an animal feeding operation unless all of the following apply:

(a) The relocation or abandonment complies with the NRCS technical guide standards for the conservation practices in this subchapter.

(b) The landowner agrees to maintain the relocated operation, if any, for 10 years unless farming operations on the affected land are discontinued.

**History:** CR–01–090: cr. Register September 2002 No. 561, eff. 10–1–02.

**ATCP 50.82 Residue management. (1) DEFINITION.** In this section, “residue management” means any of the following:

(a) Preparing land surfaces for the planting and growing of crop plants using methods that result in a rough land surface which is covered in varying degrees by vegetative residues of a previous crop, and which provides a significant degree of resistance to soil erosion by raindrop impact, surface water runoff or wind.

(b) Planting crop seeds in a narrow slot or a narrow strip of tilled soil, in order to maintain residue cover and avoid disturbing the entire soil surface.

**(2) ELIGIBLE COSTS.** (a) A cost-share grant under s. ATCP 50.40 may reimburse costs for any of the following residue management practices:

1. No-till practices.
2. Chisel plowing.
3. Disking.
4. Till-planting practices.
5. Other, similar practices.

(b) For cost-sharing purposes, the cost of residue management practices shall be based on prevailing prices charged by providers of custom residue management services in the surrounding area.

**(3) INELIGIBLE COSTS.** A cost-share grant may not reimburse costs for both this practice and the cover and green manure crop practice for the same acreage in the same year, without department approval.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse residue management costs unless all of the following conditions are met:

(a) Land subject to residue management is protected from erosion from the time of harvest until after the next planting. Protection may be provided by a cover crop residue, temporary cover or another approved practice. The residue, temporary cover or other approved practice shall cover at least 30% of the land.

(b) On lands with slopes greater than 6%, all tillage and planting operations are performed as nearly as practicable on the contour or parallel to terraces.

(c) The residue management complies with all of the following applicable standards:

1. NRCS technical guide residue management, no till and strip till standard 329A (May, 1998).
2. NRCS technical guide residue management, mulch till standard 329B (May, 1998).
3. NRCS technical guide residue management, seasonal standard 344 (May, 1998).

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**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(d) The landowner agrees to maintain the residue management practice for each cropping season for which cost-sharing is provided.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.83 Riparian buffers. (1) DEFINITION.** In this section, "riparian buffer" means an area in which vegetation is enhanced or established to reduce or eliminate the movement of sediment, nutrients and other nonpoint source pollutants to an adjacent surface water resource or groundwater recharge area, to protect the banks of streams and lakes from erosion, and to protect fish habitat.

**(2) ELIGIBLE COSTS.** A cost-share grant may reimburse any of the following costs:

- (a) Permanent fencing to protect a riparian buffer.
- (b) Costs to establish or enhance permanent vegetative cover in a riparian buffer, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer, seed, seedling trees and other necessary materials.
- (c) Costs to shape, smooth or prepare the riparian buffer before establishing a permanent vegetative cover.
- (d) Costs for land removed from agricultural production to install a riparian buffer.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS.** A cost-share grant may not reimburse riparian buffer costs unless all of the following conditions are met:

- (a) The riparian buffer system complies with all of the following that apply:
  1. NRCS technical guide critical area planting standard 342 (May, 2000).
  2. NRCS technical guide fencing standard 382 (November, 1999).
  3. NRCS technical guide field border standard 386 (May, 2002).
  4. NRCS technical guide filter strip standard 393 (January, 2001).
  5. NRCS technical guide livestock exclusion standard 472 (June, 1983).
  6. NRCS technical guide mulching standard 484 (July, 1987).
  7. NRCS technical guide riparian forest buffer standard 391 (January, 2001).
  8. NRCS technical guide shoreland habitat standard 643A (July, 2001).
  9. NRCS technical guide wildlife upland habitat management standard 645 (July, 2000).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the riparian buffer for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.84 Roofs. (1) DEFINITIONS.** In this section:

(a) "Roof" means a weather-proof covering that shields an animal lot or manure storage structure from precipitation, and includes the structure supporting that weather-proof covering. "Roof" does not include, except in the case of a manure storage structure, a covering over an enclosed structure if the sum of the length of the walls of the structure exceeds 50% of the perimeter of the covering. If a structure includes 2 or more square or rectangular areas, the ratio of wall length to covering perimeter shall be separately calculated for each square or rectangular area, excluding common sides.

(b) "Wall" means a vertical expanse in which more than 50% of the opening from eave to floor or ground is composed of a solid building material. The building material need not be rigid.

**(2) COST-SHARE ELIGIBILITY.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of constructing a roof if the county land conservation committee finds that the roof construction is the most practical and cost-effective way to achieve compliance with state or local regulations.

**(3) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a roof, over an existing or relocated animal lot or manure storage structure, that is necessary to prevent barnyard runoff or discharges from a manure storage structure.

**(4) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any of the following:

- (a) Costs to install walls or to enclose a roofed area.
- (b) Costs to design or construct a building or structure other than a roof.
- (c) Costs to install a roof over feed storage, machinery storage or animal housing areas, except as provided in sub. (3).

**(5) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of installing a roof unless all of the following conditions are met:

(a) The roof complies with the american society of agricultural engineers engineering practice number 288.5, January 2001 edition.

**Note:** Copies of ASAE EP 288.5 (January, 2001) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the department. For more information, see Appendix G.

- (b) The roof structure has sufficient ventilation to protect farm operators, livestock and the roof.
- (c) The roof and supporting structure are constructed of materials with a life expectancy of 10 years or more.

(d) The landowner agrees not to establish additional outdoor animal lots on the site for the duration of the cost-share agreement maintenance period, except with adequate runoff control practices approved by the department.

(e) The landowner agrees not to convert a roofed animal lot structure, cost-shared under this chapter, for use other than as an animal lot.

(f) The landowner agrees to maintain the roof for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.85 Roof runoff systems. (1) DEFINITION.** In this section, "roof runoff system" means facilities for collecting, controlling, diverting, and disposing of precipitation from roofs. A "roof runoff system" may include gutters, downspouts, erosion-resistant channels, subsurface drains and trenches.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a roof runoff system as part of a barnyard runoff control system or manure storage system if the roof runoff system is necessary to prevent roof runoff from flowing across areas of concentrated manure.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse costs for structures that divert water to areas not adequately protected from erosion.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of installing a roof runoff system unless all of the following conditions are met:

- (a) The roof runoff system complies with all of the following that apply:
  1. NRCS technical guide roof runoff structure standard 558 (June, 2002).
  2. NRCS technical guide underground outlet standard 620 (May, 2002).



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**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the roof runoff system for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.86 Sediment basins. (1) DEFINITION.** In this section:

(a) "Sediment basins" means permanent basins that reduce the transport of waterborne pollutants such as eroded soil sediment, debris and manure sediment. Sediment basins may include containment walls or berms, pickets or screens to filter debris, orifices or weirs to control discharge, and conduits to direct runoff to treatment or discharge areas.

(b) "Maximum storage capacity" means the volume of water, in acre-feet, capable of being stored behind a dam at maximum water elevation without overtopping any part that is not part of the spillway system.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a sediment basin, including costs for heavy use area protection, livestock fencing, filter strips, waste transfer, underground outlets, and critical area plantings.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse the costs for any of the following:

(a) Basins with a structural height of more than 25 feet or with a maximum storage capacity of more than 50 acre-feet.

(b) Basins whose failure may endanger human life, or real or personal property.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of installing a sediment basin unless all of the following conditions are met:

(a) Filter strips or buffers are used to filter any discharge from the sediment basin.

(b) The sediment basin complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide sediment basin standard 350 (September, 1990).

3. NRCS technical guide manure transfer standard 634 (January, 2002).

4. NRCS technical guide fencing standard 382 (November, 1999).

5. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

6. NRCS technical guide heavy use area protection standard 561 (March, 2002).

7. NRCS technical guide underground outlet standard 620 (May, 2002).

8. Wisconsin DNR conservation practice standard 1001, wet detention basin, dated June 1999.

**Note:** Copies of the DNR conservation practice standard 1001 are on file with the department, the secretary of state, and the revisor of statutes. Copies may be obtained from DNR or the department. For more information, see Appendix G.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the sediment basin for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.87 Sinkhole treatment. (1) DEFINITION.** In this section, "sinkhole treatment" means modifying a sinkhole, or the area around a sinkhole, to reduce erosion, prevent expansion of the hole, and reduce pollution of water resources. Modifica-

tions may include the diversion of runoff around a sinkhole, or the alteration of a sinkhole by excavation, cleanout, filter treatment, sealing or refilling.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to sinkhole treatment:

(a) Costs for the design and construction of a grassed waterway or diversion to direct surface runoff around a sinkhole.

(b) Costs for the design and construction of a grassed waterway or diversion to direct surface runoff around a geologic depression to prevent the formation of a sinkhole.

(c) Costs for the design and construction of a modification to a sinkhole for the purpose of protecting groundwater resources from contamination.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse costs for any system, component or practice that is not needed to correct an identified water pollution hazard.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse any costs related to sinkhole treatment unless all of the following conditions are met:

(a) The treatment complies with all of the following that apply:

1. NRCS technical guide sinkhole treatment standard 725 (March, 2000).

2. NRCS technical guide diversion standard 362 (May, 2002).

3. NRCS technical guide grassed waterway standard 412 (April, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the sinkhole treatment for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.88 Streambank and shoreline protection.**

**(1) DEFINITION.** In this section, "streambank and shoreline protection" means using vegetation or structures to stabilize and protect the banks of streams, lakes, estuaries or excavated channels against scour and erosion, or to protect fish habitat and water quality from degradation due to livestock access.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to streambank and shoreline protection:

(a) Costs for permanent fencing to protect streambanks and shorelines from damage by livestock.

(b) Costs to install rock riprap. Wood chunks, unsorted demolition material, brick, plaster, blacktop and other materials that may produce leachates may not be used as riprap. A cost-share grant may reimburse costs for rock and timber riprap used to establish fish habitat as part of a streambank and shoreline protection scheme, provided that reimbursement for fish habitat does not exceed 25% of the cost-share grant.

**Note:** Lunker structures, or rock and timber riprap, are sometimes used to create fish habitat.

(c) Costs to shape streambanks or shorelines before installing protective plantings or structures.

(d) Costs to construct or modify stream crossings that will minimize disturbance of the stream channel and banks.

(e) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(f) Costs for water pumps or other facilities that deliver water to livestock so that livestock can be excluded from surface waters. Well construction costs may not be reimbursed under a cost-share grant unless well construction is the most cost-effective way to deliver water to livestock.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse costs for stream-

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bank or shoreline protection unless all of the following conditions are met:

(a) The streambank or shoreline protection complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).
2. NRCS technical guide fencing standard 382 (November, 1999).
3. NRCS technical guide streambank and shoreline protection standard 580 (February, 1997).
4. NRCS technical guide tree and shrub establishment standard 612 (March, 2001).
5. NRCS technical guide heavy use area protection standard 561 (March, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) DNR pre-approves the streambank or shoreline protection project in writing if the project will create banks higher than 15 feet, measured from the stream or lake bed.

(c) The landowner agrees to maintain the streambank or shoreline protection for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.89 Strip-cropping. (1) DEFINITION.** In this section, "strip-cropping" means growing crops in a systematic strip arrangement in which strips of grass, legumes or other close growing crops are alternated with strips of clean tilled crops or fallow, and in which all of the strips are established on the contour or across a slope to reduce water or wind erosion.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of establishing a strip-cropping system, including costs for the necessary removal of obstructions.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing a strip-cropping system unless all of the following conditions are met:

(a) The strip-cropping operations are performed, to the maximum extent feasible, on the contour.

(b) The strip-cropping system complies with all of the following that apply:

1. NRCS technical guide obstruction removal standard 500 (May, 2002).
2. NRCS technical guide stripcropping, contour standard 585 (July, 1987).
3. NRCS technical guide stripcropping, field standard 586 (August, 1983).
4. NRCS technical guide stripcropping, wind standard 589 (July, 1987).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the strip-cropping for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.90 Subsurface drains. (1) DEFINITION.** In this section, "subsurface drain" means a conduit installed below the surface of the ground to collect drainage water and convey it to a suitable outlet.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a subsurface drain as part of a manure storage system, barnyard runoff control system, or erosion control system.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse the cost of establishing a subsurface drain unless all of the following conditions are met:

(a) The subsurface drain is a necessary component of a manure storage system, barnyard runoff control system or erosion control system.

(b) The subsurface drain complies with all of the following that apply:

1. NRCS technical guide subsurface drain standard 606 (September, 1989).
2. NRCS technical guide underground outlet standard 620 (May, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the subsurface drain for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.91 Terrace systems. (1) DEFINITION.** In this section, "terrace system" means a system of ridges and channels installed on the contour with a non-erosive grade and suitable spacing.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to a terrace system:

(a) Costs to install the system, including necessary costs for necessary leveling, filling and obstruction removal.

(b) Costs to purchase and install necessary underground pipe outlets and other necessary mechanical outlets.

(c) Costs to modify an ineffective system, unless the system has been rendered ineffective because of changes in cropping patterns or equipment usage.

(d) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse terrace system costs unless all of the following conditions are met:

(a) The terrace system includes a stable outlet or waterway of adequate capacity.

(b) The terrace system complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).
2. NRCS technical guide grassed waterway standard 412 (April, 2002).
3. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).
4. NRCS technical guide obstruction removal standard 500 (May, 2002).
5. NRCS technical guide terrace standard 600 (September, 1990).
6. NRCS technical guide subsurface drain standard 606 (September, 1989).
7. NRCS technical guide underground outlet standard 620 (May, 2002).
8. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

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(c) The landowner agrees to maintain the terrace system for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.92 Underground outlets. (1) DEFINITION.** In this section, “underground outlet” means a conduit installed below the surface of the ground to collect surface water and convey it to a suitable outlet.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing an underground outlet as part of a manure storage system, barnyard runoff control system, or erosion control system.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing an underground outlet unless all of the following conditions are met:

(a) The underground outlet is a necessary component of a manure storage system, barnyard runoff control system or erosion control system.

(b) The underground outlet complies with all of the following that apply:

1. NRCS technical guide subsurface drain standard 606 (September, 1989).

2. NRCS technical guide underground outlet standard 620 (May, 2002).

**Note:** NOTE: For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the underground outlet for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.93 Waste transfer systems. (1) DEFINITION.** In this section, “waste transfer system” means components such as pumps, pipes, conduits, valves, and other structures installed to convey manure and milking center wastes from buildings and animal feeding operations to a storage structure, loading area or treatment area.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a waste transfer system which is a necessary component of a manure storage system, barnyard runoff control system or milking center waste system funded under this chapter, provided that the waste transfer system is designed and used for that sole purpose.

**(3) INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse the costs for any of the following:

(a) Portable equipment for spreading wastes on land or for incorporating wastes into land.

(b) Buildings or modifications to buildings. This paragraph does not apply to building modifications that are essential for the installation of a milking center waste control system.

**(4) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of installing a waste transfer system unless all of the following conditions are met:

(a) The waste transfer system complies with all of the following that apply:

1. NRCS technical guide manure transfer standard 634 (January, 2002).

2. NRCS technical guide underground outlet standard 620 (May, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the waste transfer system for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.94 Wastewater treatment strips. (1) DEFINITION.** In this section, “wastewater treatment strip” means an area of herbaceous vegetation that is used as part of an agricultural waste management system to remove pollutants from animal lot runoff or wastewater, such as runoff or wastewater from a milking center.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the following wastewater treatment strip costs:

(a) Permanent fencing to protect the wastewater treatment strip.

(b) Costs to establish permanent vegetative cover in the wastewater treatment strip, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(c) Costs to shape, smooth or prepare the wastewater treatment strip before establishing a permanent vegetative cover.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS.** A cost-share grant under s. ATCP 50.40 may not reimburse wastewater maintenance strip costs unless all the following conditions are met:

(a) The wastewater treatment strip complies with all the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide fencing standard 382 (November, 1999).

3. NRCS technical guide livestock exclusion standard 472 (June, 1983).

4. NRCS technical guide mulching standard 484 (July, 1987).

5. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the wastewater treatment strip for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.95 Water and sediment control basins. (1) DEFINITIONS.** In this section:

(a) “Manure storage facility” has the meaning given in s. ATCP 50.62 (1) (c).

(b) “Water and sediment control basin” means an earthen embankment or a ridge and channel combination which is installed across a slope or minor watercourse to trap or detain runoff and sediment. “Water and sediment control basin” does not include a manure storage facility or a structure designed to collect runoff and sediment from concentrated animal feedlots.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse the cost of designing and constructing a water and sediment control basin, including practices necessary to protect the basin from livestock.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse the cost of installing a water and sediment control basin unless all of the following conditions are met:

(a) The water and sediment control basin complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide fencing standard 382 (November, 1999).



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3. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

4. NRCS technical guide underground outlet standard 620 (May, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the water and sediment control basin for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.96 Waterway systems. (1) DEFINITION.** In this section, "waterway system" means a natural or constructed waterway or outlet that is shaped, graded and covered with a vegetation or another suitable surface material to prevent erosion by runoff waters.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to a waterway system:

(a) Costs for site preparation, grading, shaping and filling.

(b) Costs to establish permanent vegetative cover, or to provide temporary cover until permanent cover is established. This may include costs for mulch, fertilizer and other necessary materials.

(c) Costs for the necessary removal of obstructions, the necessary installation of subsurface drains and underground outlets, and the necessary installation of machinery crossings.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse costs for a waterway system unless all of the following conditions are met:

(a) Waterways are permanently covered by vegetation or other suitable surface materials to prevent erosion. Close-sown small grains, annual grasses or mulches may be used for temporary protection if followed by an appropriate permanent vegetative cover.

(b) The system complies with all of the following that apply:

1. NRCS technical guide critical area planting standard 342 (May, 2000).

2. NRCS technical guide fencing standard 382 (November, 1999).

3. NRCS technical guide grassed waterway standard 412 (April, 2002).

4. NRCS technical guide mulching standard 484 (July, 1987).

5. NRCS technical guide obstruction removal standard 500 (May, 2002).

6. NRCS technical guide subsurface drain standard 606 (September, 1989).

7. NRCS technical guide underground outlet standard 620 (May, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(c) The landowner agrees to maintain the waterway system for 10 years unless farming operations on the affected land are discontinued.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.97 Well decommissioning. (1) DEFINITION.** In this section, "well decommissioning" means permanently disabling and sealing a well to prevent contaminants from reaching groundwater.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse costs to design and implement a well decommissioning, including costs to fill the well, seal the well, and shape the land to protect the abandoned wellhead from precipitation and runoff.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse the cost of well decommissioning unless the well decommissioning complies with all of the following that apply:

(a) NRCS technical guide well decommissioning standard 351 (April, 1999).

(b) Section NR 812.26, related to well and drillhole decommissioning.

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.

**ATCP 50.98 Wetland development or restoration.**

**(1) DEFINITION.** In this section, "wetland development or restoration" means the construction of berms, or the destruction of tile line or drainage ditch functions, to create or restore conditions suitable for wetland vegetation.

**(2) ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the following costs related to the development or restoration of wetlands:

(a) Costs for earth moving to construct or remove berms, levees or dikes.

(b) Costs for earth moving to fill in portions of drainage ditches.

(c) Costs to destroy portions of tile lines.

(d) Costs to establish vegetative cover to develop or restore wetlands, consistent with the practice goals.

**(3) DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40 may not reimburse wetland development or restoration costs unless all of the following conditions are met:

(a) The wetland development or restoration complies with NRCS technical guide wetland restoration standard 657 (September, 2002).

**Note:** For information on how to obtain NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.

(b) The landowner agrees to maintain the wetland restoration practice for at least 10 years.

**History:** CR-01-090: cr. Register September 2002 No. 561, eff. 10-1-02.